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# Delaware Register of Regulations



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Issue Date: July 1, 1998

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Volume 2 - Issue 1

Pages 1 - 156

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## IN THIS ISSUE

Regulations:

Proposed

Final

Governor

Executive Orders

Appointments

General Notices

Calendar of Events/  
Hearing Notices



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before June 15, 1998.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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## CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

1:1 **Del. R.** 35 - 37 (July 1, 1997) refers to Volume 1, Issue 1, pages 35 - 37 of the Delaware Register issued on July 1, 1997.

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## SUBSCRIPTION INFORMATION

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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ISSUE DATE	CLOSING DATE	CLOSING TIME
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.

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# PROPOSED REGULATIONS

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## Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

## Proposed Regulations

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Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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## **DEPARTMENT OF AGRICULTURE**

### **DELAWARE THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103, 10128(m)(1) (3 **Del.C.** 10103,  
10128(m)(1))

The Delaware Thoroughbred Racing Commission proposes a new Rule 13.19 regarding the racing of claimed horses. The proposed rule would provide that no horse claimed in a claiming race could race for any amount less than the claiming price for a period of thirty days after the claim. The Commission proposes this new Rule 13.19 pursuant to 3 Del.C. sections 10103 and 10128(m)(1), and 29 Del.C. section 10115. The proposed Rule will be considered by the Commission at its next regularly scheduled meeting on July 21, 1998 at 11:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Stanton, DE. Copies of the proposed rule may be obtained from the Commission. Comments may be submitted in writing to the Commission Office on or before 4:00 p.m. on July 30, 1997. The Commission Office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

### 13.19 Racing Claimed Horse

No horse claimed in a claiming race shall be raced in another claiming race for an amount less than the price for which such horse was claimed for thirty (30) days after the date such horse was claimed.

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## **DEPARTMENT OF ADMINISTRATIVE SERVICES**

### **DIVISION OF PROFESSIONAL REGULATION DELAWARE STATE BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code,  
Section 2509 (24 **Del.C.** 2509)

The Delaware Board of Pharmacy is proposing the following amendments to the Delaware Pharmacy Board Regulations:

#### Regulation I

- The grace period will be deleted from current regulation (Regulation I(C)(2)).

- Situations of hardship shall require notification via letter to the Board before the last day of the registration period (Regulation I(C)(3)(a)).
- Numerical changes are proposed to conform to above deletions (Regulation I(C)(2-4)).
- A deletion of independent pharmacist representation will be made to the Advisory Council on Continuing Education (Regulation I(D)).

### Regulation III

- Proposed blueprints of any construction performed to pharmacies will be required within a least fifteen (15) working days before the next scheduled Board of Pharmacy meeting (Regulation III(E)(6)).

### Board Hearing

The Delaware Board of Pharmacy will hold a hearing on August 12, 1998 at 10:00 a.m. in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

The Board of Pharmacy shall receive input in writing from interested persons on proposed rules regarding the proposed additions and revision of existing Regulations I and III. The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral comments should notify the Board's Administrative Assistant, Gradella E. Bunting, at 302-739-4798 at the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware 19901.

## REGULATION I PHARMACIST LICENSURE REQUIREMENTS

### A. Examination Requirements

1. In order to be eligible for examination for licensure, an applicant must have graduated from an approved school or college of pharmacy. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such

school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy Foundation (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

2. Candidates must obtain a passing grade of 75 on the NABPLEX Examination to be eligible for a license to practice. The Secretary will supply the grade obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.

3. Any applicant who fails the examination shall be entitled to take a re-examination on the Board's next regularly scheduled NABPLEX examination date. If an applicant has failed the examination three times, he/she shall be eligible to take the examination at the next regularly scheduled time, provided that he/she produces evidence of working full-time as an intern for a period of six months between examinations or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.

4. Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination.

### B. Practical Experience Requirements

1. Applicant must submit an affidavit indicating enrollment in good standing as a student entering the first professional year of college of pharmacy or if the applicant is a graduate of a foreign pharmacy school, produce evidence that he has passed an equivalency examination by the Board.

2. Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 Del. C. §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. The preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form. The registrant must submit an affidavit of hours currently completed and properly notarized 30 days prior to taking the examination. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes

and Regulations are completed.

### C. Continuing Education Requirements

1. A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted. For the period from January 1, 1998 through and including September 30, 1998, no continuing education will be required and continuing education credits received during this period may be credited to the next biennial renewal.

2. ~~Grace Period—Pharmacists who have not submitted evidence of having completed the C.E. requirements by the renewal date will be granted an extension of time to comply with the requirements of the Act, not to exceed sixty days (i.e., March 1, of the renewal year.~~

3. Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control. The Board may seek the advice of its Continuing Education Advisory Council in determining the granting of or length of the extension.

Criteria for Hardship Exemption as Recommended by the Continuing Education Advisory Council:

a. Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed. The applicant's notification letter must be received by the Board prior to the last day of the pertaining registration period.

b. The Continuing Education Advisory Council will review requests and send recommendations to the Board.

c. The Board will notify the registrant of its decision.

4. Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month)

### D. Advisory Council on Continuing Education

The Board shall establish a council of six persons to evaluate and approve intrastate programs and to advise the Board on any matters pertinent to continuing education. Three pharmacists are to be recommended by the professional pharmacy organizations of the State; ~~one member will represent independent pharmacists~~; two shall be members of the Board of Pharmacy; one shall be a pharmaceutical educator from one of the colleges located in Maryland, New Jersey or Pennsylvania. The committee will select a Chairman from among its membership. Appointments shall be for two-year periods. No member may serve more than two consecutive terms.

### E. Continuing Professional Educational Programs

#### 1. Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

#### 2. Approved Provider

a. Any provider approved by ACPE.

b. In-state organization which meets criteria approved by the Board.

#### 3. Application for Delaware State Provider

a. Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

b. The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

#### 4. Criteria for Approval of Delaware State Providers

Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

##### a. Administration and Organization

(1) The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

(2) There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

(3) Such personnel shall be qualified for such responsibilities by virtue of experience and background.

(4) If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance

of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

(5) Administrative Requirements include:

(a) The development of promotional materials which state:

1. Educational objectives.
2. The target audience.
3. The time schedule of the activities.
4. Cost to the participant/covered

items.

5. Amount of C.E. credit which will

be awarded.

6. Credentials of the faculty,

presenters, and speakers.

7. Self-evaluation instruments.

(b) Compliance with a quantitative measure for C.E. credit.

1. The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

2. In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

3. The measure of credit shall be a fifty-minute contact hour.

4. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

5. The provider must provide the Continuing Education Advisory Council upon request with appropriate records of successful participation in previous continuing education activities.

6. The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

7. The provider must have a policy and procedure for the handling or management of grievances and refunds of tuition.

b. Program Faculty

The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

c. Program Content Development

(1) Such programs shall involve effective advance planning. A statement of educational goals and/or

behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

(a) The social, economic, behavioral, and legal aspects of health care,

(b) the properties and actions of drugs and drug dosage forms,

(c) the etiology, characteristics, therapeutics and prevention of the disease state,

(d) pharmaceutical monitoring and management of patients.

(2) All ancillary teaching tools shall be suitable and appropriate to the topic.

(3) All materials shall be updated periodically to include up-to-date-practice setting.

(4) It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

d. Facilities

The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

e. Evaluation

Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

(1) Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

(2) Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

f. Criteria for Awarding Continuing Education Credits

Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

(1) In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a

post test must be presented. An automatic 25% deduction if no post test presented.

(2) In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

(3) The Committee will only assign credit for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

(4) A maximum of 2 credit hours will be awarded for First Aid or CPR/BCLS courses one time only per registration period.

(5) Credit for Instructors of Continuing Education

(a) Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Continuing Education Advisory Committee of the Delaware Board of Pharmacy.

(b) Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

(c) Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

(d) A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

(6) Credit for On the Job Training:

(a) The Board of Pharmacy Continuing Education Advisory Council does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

(b) All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

(c) No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

(d) A maximum of 4 hours (0.4 C.E.U.'s)

in this category may be applied toward fulfilling the total biennial continuing education requirements.

F. The Verification of Continuing Education - The pharmacist will be responsible for providing the Board with verification of completion of the required continuing education programs by such means as designated by the Board.

G. Re-Entry - A pharmacist may have his/her license reinstated by completing the following requirements:

1. Payment of any back fees;
2. Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;
3. Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.

H. Reciprocal Requirements

1. The Board will accept an applicant for reciprocity provided that his practical pharmacy experience and his experience in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board.

2. Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practiced as a registered pharmacist for at least one year during the last three years or shall be required to pass the Board of Pharmacy's Practice of Pharmacy examination or an examination deemed equivalent by the Board and obtained a minimum grade of 75 percent.

3. Reciprocity applicants who took examinations after June 1, 1979, must have passed the National Association of Boards of Pharmacy standard examination or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

4. All reciprocal applicants must take a written jurisprudence examination and obtain a minimum grade of 75 percent. Jurisprudence examinations will be given at such times as determined by the Board. In order to be eligible to take the jurisprudence examination, all necessary paperwork must be completed and received by the Board office at least 10 days prior to the next scheduled examination.

5. Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

Regulation I (C)(2) revised 2/6/97

**REGULATION III  
PHARMACY REQUIREMENTS****A. PHARMACIST IN CHARGE**

1. Application for permit to operate a pharmacy in the State of Delaware must be on a form approved by the Board. The form shall include the statement to be signed by the pharmacist in charge, "I understand that I am responsible for conducting and managing the prescription department in compliance with applicable State and Federal laws."

2. The Board interprets the responsibilities of the Pharmacist-in-Charge to include, but not be limited to the following:

a. Maintain necessary pharmaceutical equipment and reference texts in accordance with the State Board of Pharmacy requirements.

b. Maintain records required by the Uniform Controlled Substances Act and other relevant State and Federal regulations.

c. Maintain proper security of particular pharmacy operation during and after normal business hours.

d. Establish procedures within operation that maintain standard of practice as it relates to the dispensing of pharmaceuticals. These procedures shall include proper supervision of supportive personnel and delegation of authority to another pharmacist when not on duty.

e. The pharmacist on duty is directly responsible for his own actions.

f. Notify the Board of Pharmacy in writing within 10 days of termination as pharmacist-in-charge.

**B. OWNER'S AFFIDAVIT**

The owner or owners and, in the case of a corporation, an authorized official of the corporation must present an affidavit properly notarized containing the statement, "I hereby swear or affirm that the foregoing statements are correct and do hereby agree to abide by the pharmacy laws of the State of Delaware and to all rules and regulations of the Delaware State Board of Pharmacy." The Board must be notified within 10 days of change of ownership.

**C. EQUIPMENT AND REFERENCE MATERIALS**

Each pharmacy shall have the following equipment and current edition of the following texts:

**1. REFERENCES:**

a. Delaware Laws and Regulations governing Pharmacy.

b. Federal Regulations covering the Food and Drug Act, and Controlled Substances Act (If available in another text purchase is not necessary)

c. USP-DI (All volumes and supplements)

d. One (minimum) of the following texts from each category:

**(1) DRUG INTERACTIONS**

(a) Facts and Comparisons Drug Interactions (Metaphor)

(b) Drug Interactions

(c) Hansten's Drug Interactions

(d) APhA Evaluation of Drug Interactions

**(2) DRUG INFORMATION:**

(a) Facts and Comparisons

(b) American Hospital Formulary Service

(c) Pharmindex

**2. EQUIPMENT****a. PRESCRIPTION SCALE, CLASS A**

Set of Metric Weights

**b. GRADUATES, (must be glass) Metric**

One of Each:

30 ml

60 ml

125 ml

500 ml

(or Set with both metric and Apothecary

Graduations may be used)

**c. MORTARS AND PESTLES**

1 8 ounce glass

1 8 ounce wedgewood

**d. FILTER PAPER****e. PRESCRIPTION/PHYSICIAN ORDER FILES****f. TWO SPATULAS****g. ONE GLASS FUNNEL****h. ONE GLASS STIRRING ROD****i. OINTMENT SLAB OR PAPERS****j. PURIFIED WATER**

Each Pharmacy shall have such additional equipment as is necessary to perform a specific procedure.

All equipment must be clean and must be maintained in such a manner that allows the pharmacist to accurately weigh, measure and compound ingredients.

**D. PHYSICAL FACILITIES**

Have sufficient size, space, sanitation, and environmental control for adequate distribution, dispensing and storage of drugs and devices. Such facilities shall include:

1. A dispensing area of adequate size and space for proper compounding, dispensing and storage of drugs and devices, to ensure the safety and well being of the public and pharmacy personnel.

2. Sufficient environmental control, i.e. lighting, ventilation, heating and cooling to maintain the integrity of drugs and devices. The area in which drugs and devices are stored shall be accurately monitored using control devices to maintain room temperature between 59 and 86 Fahrenheit.

3. The pharmacy department or prescription area must contain a sink with hot and cold running water. It must be large enough to accommodate the equipment required by the

Board so that the utensils can be properly washed and sanitized.

4. Suitable refrigeration with appropriate monitoring device. Refrigerators and freezers (where required) will be maintained at the USP/NF range:

Refrigerator - 36 to 46 Fahrenheit

Freezer -minus 4 to minus 14 Fahrenheit.

A sign with letters not less than 3/4" in height in the vicinity of the prescription department visible to the public which shows the name of the pharmacists employed at that pharmacy or the name of the pharmacist on duty.

#### E. BUILDING STANDARDS:

An application to operate a new pharmacy must include (3) copies of blueprints drawn to scale of the proposed prescription department. The blueprints must include the following:

1. The requirements listed in §2534(F)(1) through (4).

2. A view of the partition surrounding the prescription department showing a five (5) foot height requirement measured from the floor. A section or sections totaling a maximum of twelve (12) ft in length and at least three (3) ft in height will be acceptable in all situations. The area(s) must be secured to the five (5) ft level when the pharmacist or designated responsible person is not in the pharmacy department.

3. A partitioned area which assures patient privacy will be provided to facilitate counseling. This area must afford the patient privacy from auditory detection by any unauthorized person or persons. The minimum requirement would be a 9 square foot partitioned area.

4. The blueprints shall include the location of the sink, all doors, storage room, approved Schedule II controlled substance safe or cabinet, and the method of securing the prescription department from floor to ceiling, when the prescription department is closed and the remainder of the store is open.

5. The blueprints must include the type of alarm system to be installed, and the name, address and phone number of alarm provider. The alarm system, as required by Regulation 5 of the Delaware Controlled Substance Act, must be reviewed and approved for compliance by the Office of Narcotics and Dangerous Drugs.

6. The above requirements shall also apply for any remodeling or change of location of the prescription department. The pharmacist-in-charge or applicant for permit must submit the blueprint requirements to the Delaware Board of Pharmacy and the Office of Narcotics and Dangerous Drugs prior to any construction and at least 15 days prior to the next scheduled Board of Pharmacy meeting for its review.

#### F. SECURITY:

When the pharmacist is off duty and the operation is open for business, the pharmacy department shall be physically or

electronically secured from floor to ceiling. The partitioned off section required by 2534 must be five feet high measured from the floor. A conspicuous sign with letters not less than three inches in height, reading "PRESCRIPTION LABORATORY TEMPORARILY CLOSED, NO PROFESSIONAL SERVICES RENDERED," or words of similar import, must be posted in the front section of the operation or in front of the prescription area, room or partitioned off section where it can be seen by the public.

#### G. BOARD INTERVIEW:

Applicants for permit to operate a pharmacy in the State of Delaware must appear before the Board for an interview. The owner or authorized official must be present in addition to the pharmacist-in-charge. Whenever there is a change of pharmacist-in-charge, if that person has never held that position in the State of Delaware, he/she must appear before the Board for an interview within ninety days after assuming the position.

Regulation III (E)(2) revised 6/16/97

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF PROFESSIONAL  
COUNSELORS OF MENTAL HEALTH**  
Statutory Authority: 24 Delaware Code,  
Section 3007(a)(1) (24 **Del.C.** 3007(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 3007(a)(1), the Delaware Board of Professional Counselors of Mental Health proposes an amendment to Rule VI of the Rules and Regulations. The proposed rules and regulations would allow the Board to impose continuing education requirements for licensees.

The public hearing has been scheduled for July 31, 1998 on the proposed Rules and Regulations at 1:00 p.m. in the Second Floor Conference Room A of the Cannon Building, will receive and consider input, in writing, from interested persons on the proposed rules and regulations. The final date for interested persons to submit comments shall be at the above-scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations, or to make comments at the public hearing should notify the Board's Administrative Assistant Gayle Franzolino by calling (302) 739-4522 Ext. 220, or by writing to the Delaware Board of Professional Counselors of Mental Health, P. O. Box 1401, Cannon Building, Dover, Delaware 19903.

**AMENDMENT TO SECTION VI OF THE RULES AND REGULATIONS BASED ON 6/12/98 BOARD MEETING****I. MEETINGS AND ELECTIONS**

(1) Meetings - Regular meetings of the Board shall be held on a monthly basis as needed, at least in June and December, at a time and place designated by the Board.

(2) Election of Officers - The Board shall elect officers annually at the regular December meeting

**II. LICENSURE BY CERTIFICATION**

Applicants for LPCMH licensure by certification shall fulfill the following requirements:

(1) Certification - The applicant shall be certified by NBCC as a National Certified Counselor (NCC), by ACMHC as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization.

**Certifying Organization** - A certifying organization shall be defined as a national mental health specialty certifying organization acceptable to the Board. This shall include the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), formerly the National Academy for Certified Clinical Mental Health Counselors (NACCMHC), and other organizations that meet all of the following criteria:

(a) The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

(b) The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

(c) The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

(d) The organization shall require the minimum of a master's degree in the counseling or behavioral science field.

This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

(2) Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree..

(3) Clinical Experience - Clinical experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

**Designated Objective Agent** - A designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" or the "Verification of Self Employment" form.

(4) Supervised Clinical Experience - Supervised clinical experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised clinical experience acceptable to the Board shall be defined as follows:

(a) Supervised clinical experience shall consist of 1,600 hours of clinical experience concurrent with 100 hours of clinical supervision over a period of no more than four (4) years.

(b) In no case shall the applicant have less than 1,600 hours of the required post- master's degree supervised professional clinical experience.

**Clinical Supervision** - Clinical supervision shall be ongoing, regularly scheduled meetings with a designated, approved clinical supervisor for the purpose of oversight, guidance and review of clinical practice. Consultation and/or informal case reviews are not acceptable as clinical supervision. Clinical supervision may take place in individual and/or group settings, defined as follows:

(a) Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

(b) Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

**Supervisory Setting** - No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

Supervision shall be verified by the "Clinical Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor .

**III. LICENSURE BY RECIPROCITY**

Applicants for LPCMH licensure by reciprocity (i.e., those requesting licensure based upon active licensure status in another state) shall meet the following requirements:

(1) Proof of Licensure Status - The applicant shall hold an active professional counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board by that state on the "Verification of Licensure or Certification from Another State" form.

(2) Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

(3) Determination of Equivalency - The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state require him/her to meet all educational, experience and supervision requirements set forth in Title 24, Delaware Code, Chapter 30. Based upon the information presented, the Board shall make a determination regarding equivalency of the requirements of Title 24, Delaware Code, Chapter 30, and those of the applicant's licensing state.

(4) Non-Equivalency LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the required 1,600 hours of supervised experience, then the applicant shall be eligible for licensure as a LACMH, in which case he/she shall have four (4) years to obtain the balance of the supervised experience required. The applicant shall be given full credit for such supervised experience as was required for licensure in his/her licensing state. In such situation, the Board shall allow for disruption in the requirements that the applicant's supervised experience be completed within a four (4) year period.

#### IV. LICENSURE OF ASSOCIATE COUNSELORS OF MENTAL HEALTH

(1) Written Plan - The applicant shall submit a written plan for supervised professional experience, written according to the "Licensed Associate Counselor of Mental Health Guidelines for Written Plan for Supervision," and signed by the approved professional supervisor.

#### V. APPLICATION AND FEE, AFFIDAVIT AND TIME LIMIT

When applying for licensure, the applicant shall complete the following:

(1) Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

(2) Affidavit - The applicant shall submit a signed,

notarized "Affidavit," affirming that he/she has not violated any rule or regulation set forth by the Delaware Board of Professional Counselors of Mental Health; and that he/she has not been convicted of any felony or misdemeanor involving dishonesty or for any offense.

(3) Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

#### VI. RENEWAL OF LICENSURE

(1) Renewal Date - The LPCMH license shall be renewable biennially on September 30 of even-numbered years, beginning with September 30, 1994.

(2) Requirements for Renewal - Requirements for licensure renewal are as follows:

(a) Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization. This certification shall be verified by the appropriate "Verification of Certification Form," submitted directly to the Board by the certifying organization.

##### (b) Continuing Education

[1] Requirement - The candidate for renewal shall have completed no less than forty (40) clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.

[2] Acceptable Continuing Education - Acceptable continuing education shall include the following:

[a] Continuing education hours approved by a national mental health organization, such as NBCC, ACMHC, APA, shall be acceptable. Other training programs may apply for continuing education oriented towards enhancement, knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter, or by designated official of the sponsoring organization.

[b] Academic course work, and presentation of original papers providing training and clinical supervision may be applied for up to twenty (20) clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances, may there be less than twenty (20) hours of face-to-face participation in continuing education as outlined in [a] above.

[3] Make-Up of Disallowed Hours - In the event that the Board disallows certain continuing education clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable continuing education hours required.

(c) Verification - Verification of continuing education hours shall be by the "Continuing Education Form for Licensed Professional Mental Health Counselors," with appropriate documentation for each item listed attached to

the form.

(b)(d) **Fees** - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division of Professional Regulation for that licensure renewal period. A fifty percent (50%) late charge shall be imposed upon any fee paid after the renewal date.

## VII. REACTIVATION OF LICENSURE

(1) **Reactivation** - An expired license shall be reactivated as follows:

(a) **Within Five (5) Years** - An expired license shall be reactivated within five (5) years following the expiration date upon fulfillment of the following requirements:

[1] **Written Request** - Written request to the Board requesting reactivation of licensure.

[2] **Certification** - Current certification in good standing, as of the date of the request for licensure reactivation in NBCC, ACMHC or other certifying organization.

[3] **Continuing Education** - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for reactivating.

[4] **Fees** - Payment of renewal fees for any licensure renewal periods which have elapsed since expiration of licensure, plus a late charge of fifty percent (50%) of the most recent licensure renewal fee.

## VIII. RETURN TO ACTIVE STATUS

(1) **Return to Active Status** - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

(a) **Written Request** - Written request to the Board requesting return to active status.

(b) **Certification** - Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.

(c) **Continuing Education** - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

(d) **Fee** - Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.

## IX. TEMPORARY SUSPENSION PENDING HEARING

No order temporarily suspending a practitioner's license shall be issued by the Board with less than twenty-four (24) hours prior written or oral notice to the practitioner or the practitioner's attorney, so that the practitioner or the attorney may be heard in opposition to the proposed suspension and unless at least four (4) members of the Board vote in favor of such a temporary suspension.

An order of temporary suspension pending a hearing shall remain in effect for a period of time no longer than sixty (60)

days from the date of the issuance of said order, unless the suspended practitioner requests a continuance of the date for the convening of the hearing panel. In such event, the order of temporary suspension pending a hearing shall remain in effect until the hearing panel has convened and a decision rendered.

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## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

\* PLEASE NOTE THAT THE FOLLOWING REGULATORY ACTIONS WILL BE PRESENTED TO THE STATE BOARD OF EDUCATION AT ITS MONTHLY MEETING IN JULY

### REPEAL OF REGULATION SCHOOL ATTENDANCE

The Secretary seeks the approval of the State Board of Education to repeal the regulation School Attendance, found on page A-8, 4.a., b., c., and d. in the Handbook for K-12 Education. The content of the regulation is found in the Del. C., Chapter 27, and is included for technical assistance purposes but it does not need to be regulated by the Department of Education.

#### 4. SCHOOL ATTENDANCE

~~Additional information concerning school attendance-- laws, regulations, reasons for necessary and legal absences, the role of the visiting teacher, and recommended forms are found in the publication, Resource Materials for Developing Procedures of Administering School Attendance, Revised January 1990. (See Appendix A)~~

a. ~~Every parent, guardian or other person in the State having legal control of a child between the ages of 5 and 16 is required to, and shall, send such child to a free public school each day of the minimum school term of 180 days.~~

(H) ~~Students in special education who attain age 21 after September 30 (except July 1 for Complex or Rare), may continue their school placement until the end of that fiscal year.~~

b. ~~After a child has once been enrolled in school, the school shall require an excuse from the parent or guardian for every absence, and such excuse shall contain the reason for the absence.~~

c. ~~The school principal is responsible for recommending to the local board of education guidelines relating to classroom attendance and the establishment of acceptable standards of performance in the subject areas required for graduation or promoting along with acceptable attendance standards for all subject areas.~~

d. ~~The chief school officer is the attendance officer of the district. A visiting teacher is assigned to each school district or a combination of districts to investigate attendance~~

problems. It is always the first goal of attendance personnel to ascertain the reason for absence and then seek a way to return the child to school. The visiting teacher should be an enforcement officer only as a last resort. However, if the investigation warrants, a school attendance violation notice may be sent to the parents by the chief school officer.

## GENERAL EDUCATIONAL DEVELOPMENT (GED)

### EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the approval of the State Board of Education to amend the regulations for the General Educational Development Endorsement found in the Handbook for K-12 Education, page D-12, J.1.d.1. through 5. The General Educational Development (GED) endorsement is given to persons who satisfactorily pass the General Educational Development (GED) Test. Persons who satisfactorily pass the GED Test battery are issued a "Delaware Department of Education Document of Endorsement of Secondary School Attainment". The program is controlled by the American Council on Education and State Guidelines.

The purpose of GED testing is to provide a method of measuring the educational achievement of adults who have not completed a formal high school diploma program, but have acquired comparable secondary education skills and knowledge through informal learning experiences.

There are five GED tests which measure competence in the use and understanding of knowledge, regardless of how it was obtained. The tests include: writing, social studies, science, reading skills, and mathematics. A minimum passing score is required for each part of the test.

The amended regulation includes the eligibility criteria and the required test scores. The amendments clarify the language and add a waiver procedure for 16 and 17 year old students.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards?  
The regulation is about a testing strategy for adults and

older youth who have not received a high school diploma and is not an instructional program.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation does not address equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation does not address health and safety issues, it is a testing program.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation does not address legal rights issues.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies?

The amended regulation will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

There must be regulations guiding the GED program because the program is statewide and under the direction of the Department of Education.

10. What is the cost to the state and local school boards of compliance with the regulation?

There is no additional cost to the state and local boards for compliance with this amended regulation.

FROM HANDBOOK FOR K-12 EDUCATION

IV.J.1.d.

Individuals may be granted a General Educational Development (GED) Endorsement upon the passing of the GED Test. The following requirements must be met by each applicant in order to be eligible to take the battery of GED tests:

- (1) be a resident of the State of Delaware;
- (2) the class of initial school entry in which the applicant was a member must have graduated from high school;
- (3) be officially withdrawn from a regular high school program;
- (4) be at least 18 years old; and
- (5) must take and pass the Official GED Practice Test with a score of 225 and no less than 45 in each sub-test area prior to filing an application to take the GED test. Official practice test scores must accompany the GED application to be eligible to test. (A waiver will be granted to an individual who is not able to take the practice test due to medical reasons, special administration adaptations, or prohibiting life circumstances. The waiver must be obtained from the Delaware Department of Public Instruction through the Office of Adult Education and documentation must accompany the waiver request.)

(State Board Approved July 1981, Revised February 1991)

AS AMENDED

GENERAL EDUCATIONAL DEVELOPMENT (GED)  
REGULATIONS

The Delaware General Educational Development (GED) Endorsement is given to persons who satisfactorily pass the General Educational Development (GED) Test.

1. To be eligible to take the GED Test an applicant shall:
  - a. Be a resident of Delaware or if a resident of another state work in the state for at least one year.
  - b. Have withdrawn from a regular high school program.
  - c. Be 18 years of age or older  
or  
Be 16 or 17 years of age and meet the following requirements:
    - (1) Be a resident of the State of Delaware.
    - (2) Be officially withdrawn from a regular high school program.
    - (3) Be at least 16 years of age at the time of application for a waiver.

(4) Make written application to the Delaware Department of Education showing good cause for taking the test and designating where the test will be taken.

(5) Provide verification of withdrawal from high school and a copy of the GED practice scores.

d. Pass the Official GED Practice Test with a score of 240 or better and not less than 45 on each of the 5 sub-test areas.

2. An individual shall have a standard score of not less than 40 on each of the five tests with an average standard score of not less than 45 for all five tests and a total standard score of not less than 225 in order to be issued a GED Endorsement. Forty-five days must lapse prior to re-testing and instruction is recommended before re-testing.

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**JAMES H. GROVES HIGH SCHOOL**

EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL. C., SECTION 122(d)

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the approval of the State Board of Education to amend the regulations for the James H. Groves High School contained in the Handbook for K-12 Education, pages D-8 and D-9, F.1. and G.1. through 5. The amended regulations for the James H. Groves High School apply to all of the centers located in the state.

The James H. Groves High School is a Department of Education approved and Middle States accredited secondary school. Its purpose is to provide Delaware adults and out of school youth with an opportunity to increase their employability through the completion of a high school education and to earn a high school diploma.

The school, established in June of 1964 by the Delaware General Assembly, was named in honor of James H. Groves, the first Superintendent of Public Instruction in Delaware. The Department of Education was authorized to use state funds to establish Groves centers in each of the three counties of the State through a proposal application process.

In 1989, a new component was added to the Groves program called the "Alternative Secondary Initiative". This initiative was developed to assist high school students in graduating from their home high school. Students can graduate from their home high school if they are enrolled in just one class in their home high school and take the rest of their courses through the Groves program. In the amended regulations this program will be called the "In School Credit

Program”, to avoid confusion with other “alternative education” programs. Classes in the Groves centers are offered in the evening or as an extended day or year program.

The principals of the Groves High School centers are appointed by the local school districts where the centers are located. The principals are responsible to the Department of Education through the Education Associate for Adult Education in conjunction with the Superintendent of the District that is managing the contract for the center.

The amended regulations include sections on: Administration, Admission Criteria, Acceptable Methods for Earning High School Credit, Attendance, Grading and Graduation Criteria, Fees, Student Rights and Responsibilities, and Establishment and Closure of a Center.

## C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The graduation requirements for the Groves students are the same as for regular high school students with the exception of a waiver for physical education. The Groves students must also meet the state content standards which should serve to increase expectations for these students as well as for all other students in the public school system.

2. Will the amended regulations help ensure that all students receive an equitable education?

The regulations apply to all Groves students and the program itself is designed to address equity of opportunity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

These amended regulations do not specifically address health and safety issues but the Groves program like all local school districts must have a policy on Student Rights and Responsibilities.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations include a due process procedure designed to protect students legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations do not alter the existing level of authority and flexibility of decision making at the local board and school levels.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations do not alter the existing reporting and administrative requirements and mandates for decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

Decision making and accountability for addressing the subject will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

Since the James H. Groves High School program is a program of the Department of Education and is statewide, regulations governing the program must be in place.

10. What is the cost to the state and local school boards of compliance with the regulation?

There is no additional cost to the state and local boards associated with implementing the amended regulations.

## FROM THE HANDBOOK FOR K-12 EDUCATION

### IV. F. ~~JAMES H. GROVES ADULT HIGH SCHOOL~~

~~1. The James H. Groves Adult High School is a state approved secondary school operated during afternoon and evening hours to provide adults and out-of-school youth with an opportunity to earn a regular State of Delaware high school diploma and to become more employable. The Middle States Association of Colleges and Schools gave full accreditation to the Groves Program in 1983.~~

~~2. To enroll in the Groves High School Program an individual must be 16 and out of school or transfer to Groves from the home school.~~

### G. ~~AT RISK ALTERNATIVE SECONDARY EDUCATION PROGRAM~~

#### ~~1. PROGRAM~~

~~a. As of July 1989, the secondary alternative initiative was added to allow in-school high school students to attend Groves and earn an unrestricted number of credits as part of their home high school program in order to decrease the dropout rate from Delaware high schools.~~

~~b. The home school forms a partnership with a James H. Groves center to jointly provide an educational program for students. Students have the flexibility to attend~~

during the extended day, the evening, and/or the extended year summer program to obtain credits toward graduation.

c. A student enrolled in the alternative program remains enrolled in the home school provided the student is taking at least one credit at the home school. Alternative students must meet the same graduation requirements as other students in home school.

2. ~~HOME AND SCHOOL RESPONSIBILITIES:~~

a. identify potential students for this program, using established criteria;

b. hold a joint conference with Groves personnel and the student to determine the suitability of the program for the student; and

c. consult parents regarding the inclusion of their youth in the program.

3. ~~THE HOME SCHOOL AND GROVES TOGETHER:~~

a. develop a schedule with the student that best meets the needs of that individual.

4. ~~GROVES RESPONSIBILITY:~~

a. individualized instruction in small classes; and

b. send grades to the student's home school.

5. ~~IDENTIFICATION CRITERIA~~

a. Students recommended for this program are those who would benefit from an alternative structure and who meet one or more of the following criteria. These students:

(1) have been retained, are overage for their grade level or have been administratively assigned;

(2) have excessive absences and tardiness;

(3) are not passing the required courses for graduation;

(4) need to be employed; and

(5) have family obligations and responsibilities.

b. All students enrolled in the alternative program must take at least one full unit of credit at their home high school and will be included in the September 30th unit count. (State Board Approved November 1988)

AS AMENDED

REGULATIONS

JAMES H. GROVES HIGH SCHOOL

1. Administration

The James H. Groves High School is an adult high school established by the State of Delaware to provide the opportunity for adults and out-of-school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

2. Admission Criteria

The following individuals may enroll in the James H. Groves High School:

a. Adults, 18 years of age and older, who reside in the State of Delaware or who have worked in Delaware for a minimum of one year.

b. Out-of-school youth, 16 - 21, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending.

c. Non-residents who otherwise meet the eligibility requirements set forth in paragraph 2.a. and b. above.

d. High school students who are at least 16 years of age and enrolled for at least one credit in their home school may earn an unrestricted number of credits in the Groves In-School Credit Program and still graduate from their home high school.

(1) To enroll in this program, students shall have the permission of their home high school, their parent or guardian and the Groves High School principal or designee.

(2) All students enrolled in the Groves In-School Credit Program shall be included in the September 30th unit count of their home high school.

(3) Students who withdraw from their home high school and transfer to the Groves High School shall no longer be considered as a student in the Groves In-School Credit Program and will be assessed the materials fee for that semester.

e. Individuals expelled from a local school district may not be enrolled in Groves High School without a waiver from the Delaware Department of Education for the duration of the expulsion. Individuals who enroll without a waiver will lose credits earned during the expulsion period.

(1) An applicant for a waiver must: be at least 17 years of age, intend to graduate from the James H. Groves High School, be expelled for a non-violent reason, not be a security threat, demonstrate interest in learning and state specific ways to be a successful student.

3. Acceptable Methods for Earning High School Units of Credit

The following methods or any combination of the following methods are acceptable:

a. Course Enrollment - Courses are offered in a classroom or distance setting.

b. Correspondence Study - Approved courses offered through accredited correspondence schools are accepted for high school credit.

c. Summer School - Approved courses offered through summer school are accepted for high school credit.

d. Distance Learning - Approved courses offered through accredited distance learning programs are accepted for high school credit.

e. Independent Study - Courses offered through

## PROPOSED REGULATIONS

independent study must be assigned an instructor who will monitor the progress of the student. The content will be the same as required in the course enrollment.

f. Achievement Testing - Credits are awarded through achievement testing based on the content demonstrated. Approved tests used to award credit are standardized and/or specifically designed to determine the level of student competence.

g. Employment or Training Experience - Credit for employment or training experience will be evaluated to determine the number of credits that will be awarded based on length of employment, level of job responsibility and scope of work.

h. Vocational Courses - Upon satisfactory completion of approved vocational, vocational or apprenticeship courses, units of credit will be awarded.

i. Military Experience - Veterans may be granted credit based on military training and experience.

j. Higher Education Courses - Higher education courses will be awarded credit as designated by other Delaware Department of Education policy.

k. Foreign School Attendance - Credit for courses completed in schools in foreign countries will be evaluated in terms of equivalent content to Delaware high school graduation requirements.

l. Prior High School Credits - Any high school credit earned by the student may be transferred into Groves and become part of the transcript toward graduation.

m. Community Service - The community service unit of credit is designed to recognize the community life experiences of the student and to encourage the student to assume civic responsibility. The emphasis is upon volunteer service given freely for the betterment of the community and other persons.

n. Internships - Internships are designed to provide practical real life experiences for students. Credit may be earned based on the skills and the length of time of the experience.

o. Certificate of Educational Attainment (CEA3) - The CEA3 enables a student to demonstrate high school level skills through a written test. By passing the Official GED Practice Test with a score of 240 or better with no less than 45 in each sub-test area and writing a Groves approved content area research paper, students are awarded 10 units of credit toward graduation.

#### 4. Attendance, Grading and Graduation Criteria

a. Students attending James H. Groves High School courses, which have an attendance requirement, shall attend a minimum of 85% of the course hours in order to receive a unit of credit. No provision is made for excused absences.

b. The grading system for the James H. Groves High School shall be based on a 100 point numeric scale. An alpha conversion chart to determine level of performance shall be:

(1) 93 - 100 Students receiving a grade of "A" have demonstrated superior understanding of the content and have demonstrated knowledge and competence at the highest level.

(2) 85 - 92 Students receiving a grade of "B" have a better than average understanding of the content and have demonstrated above average knowledge and competence.

(3) 75 - 84 Students receiving a grade of "C" have a satisfactory understanding of the content and have demonstrated knowledge and competence.

(4) Less than 75 No credit awarded.

(c) The total number of credits required for graduation from James H. Groves High School shall be the minimum set by the Delaware State Board of Education. Physical Education is not required.

#### 5. Fees

All fees for the James H. Groves High School shall be set by the Secretary of Education.

#### 6. Students Rights and Responsibilities

Students enrolled in each center shall have such rights and be subject to such responsibilities as set forth in the document the James H. Groves Student Rights and Responsibilities and as such may be amended by the Delaware Department of Education.

#### 7. Establishment and Closure of a Center

##### a. Establishing a Center

(1) A school district/agency/organization may seek to establish a James H. Groves Center in their service delivery area by following the process outlined below. No district or agency/organization shall have more than one Groves Center.

(a) An affiliation must be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot center.

(b) After a two year affiliation as a satellite center of an existing Groves Center or two year success as a pilot center, a formal request may be made to the Delaware Department of Education for full center status.

(c) A formal request for center status may be made after two years as satellite center and must be made one year prior to the desired start-up date. The request must include:

(i) A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing centers, and rationale for requesting a Groves Center.

(ii) A description of the district/agency/organization's experience and success in adult program delivery.

(iii) An explanation of the commitment to the Groves adult education program and assurances.

(iv) Budget requirements including in-kind contributions.

(d) District/Agency/Organization representatives will meet with the Groves Leadership Team to review the "Center" request.

(e) Groves Leadership Team will make a recommendation for "Center" status to the Delaware Department of Education, Education Associate for Adult Education.

(f) Approval or denial will be made to the district/agency/organization within 60 days of center status application.

(g) If approved, the Delaware Department of Education will apply for center funding in the upcoming State budget cycle. If State funding is allocated for the additional center, full center status will be given to the program.

(h) Appeal Process

In the event "Center" status is denied by the Delaware Department of Education, Education Associate for Adult Education, a hearing can be requested by the District/Agency/Organization through the Education Associate for Adult Education. The hearing will be conducted by the Associate State Secretary.

b. Closing a Center

(1) Voluntary Closing

A school district/agency/organization may close a James H. Groves Center in their service delivery area by following the process outlined below. For a voluntary closing, a school district/agency/organization must announce by November its intention to discontinue service at the end of the fiscal year. The following steps will be followed:

(a) Within two months of closing, the district/agency/organization must:

(i) Notify all current students of the center closing and provide them with information to transfer to another center. Records of active students must be sent to the new center.

(ii) Provide all past records to the Delaware Department of Education.

(iii) Send all equipment purchased for the center to the Delaware Department of Education or to the designated centers for re-distribution.

(iv) Return any unspent funds to the Delaware Department of Education.

(b) District/Agency/Organization representatives will meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

(2) Non-Voluntary Closing

(a) A non-voluntary closing will be made when:

(i) There is insufficient enrollment to sustain a center.

(ii) The center does not follow the policies, procedures, rules, regulations or instructional program set forth for the James H. Groves High School.

(iii) The Delaware Department of

Education determines the center is not providing a quality instructional program to the students at that center.

The Delaware Department of Education will provide notice to the school district/agency/organization of the closing by November giving eight months to close the center. The following steps will be followed:

(b) Within two months of closing, the district/agency/organization must:

(i) Notify all current students of the center closing and provide them with information to transfer to another center. Records of active students must be sent to the new center.

(ii) Provide all past records to the Delaware Department of Education.

(iii) Send all equipment purchased for the center to the Delaware Department of Education or to the designated centers for re-distribution.

(iv) Return any unspent funds to the Delaware Department of Education.

(c) District/agency/organization representatives will meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

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**MIDDLE LEVEL MATHEMATICS AND SCIENCE  
CERTIFICATION**

EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL. C., SECTION 122(d)

A. TYPE OF REGULATORY ACTION REQUESTED  
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF  
REGULATION

The Secretary seeks the approval of the State Board of Education to make two amendments to the certification regulations concerning middle level certification in mathematics and science. These amendments are found in the Manual for Certification of Professional Public School Personnel, page 34, Section 2, and page 12, Chapter II. The purpose of these amendments is to provide added flexibility in the certification requirements for middle level mathematics and science teachers.

The amendment found on page 34, Section 2, adds a line under the title Sciences that reads, "All secondary science certificates are valid in middle level science, Grades 5-8". Current policy requires a secondary certified science teacher to meet General, Life, or Earth Science Certification in order to teach middle level science. This amendment allows any certified secondary science teacher, regardless of science area, to teach middle level science. The other amendment found on page 12, Chapter II, amends part A.3., Limited Standard License- Non renewable (Substandard) by adding another

category, f., Limited Standard - Middle Level Math/Science (LS-ML). Item f. gives teachers holding a Standard or Professional Status Certificate in either Elementary or Middle Level who are assigned to teach 7<sup>th</sup> or 8<sup>th</sup> grade mathematics and/or science up to three years to complete the additional requirements for the Standard Certificate in the area of assignment.

### C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations do not specifically address student achievement, they address flexibility needs for the certification of middle level mathematics and science teachers.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations do not address equity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations do not address health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations do not address students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place unnecessary reporting or administrative requirements or mandates upon the decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subjects to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subjects to be regulated will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of

mathematics, science, language arts and social studies?

The amended regulations will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the amended regulations?

The changes must be made through amendments to regulations.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations ?

There is no additional cost to the state or local school boards for compliance with the amended regulations.

Effective July 1, 1993

DELAWARE STATE DEPARTMENT OF EDUCATION  
CERTIFICATION OF PROFESSIONAL PUBLIC  
SCHOOL PERSONNEL

SCIENCES

All secondary science certificates are valid in middle level science, Grades 5-8.

I. Requirements for the Standard License

A. Bachelor's degree from an accredited college; and

B. Professional Education

1. Completion of an approved teacher education program in Science;

-OR-

2. A minimum of 24 semester hours to include human development, methods of teaching secondary science, teaching of reading in science or identifying/treating exceptionalities, effective teaching strategies, multicultural education, and clinical experience/student teaching at the secondary (7-12) level;

-AND-

C. Specific Teaching Field

1. Major in the field of endorsement;

-OR-

2. Completion of an approved teacher education program in the field of endorsement;

-OR-

3. Completion of (at least) the semester hours indicated below for the field of endorsement:

a. CHEMISTRY 45 semester hours

(required 9-12, valid Chemistry only)  
AS AMENDED

Limited Standard - Middle Level Math/Science (LS-ML)

f. May be issued for up to three (3) years to a teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall complete the requirements for the Standard Certificate in the area(s) of the assignment. This regulation will be effective through the 1999-2000 school year.

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**Repeal of Middle Level Education Section of Handbook for K-12 Education**

The Secretary seeks the approval of the State Board of Education to repeal the Middle Level Education Section of the Handbook for K-12 Education, Section III, pages C-1 through C-5 with two exceptions. The exceptions are: A.2.e., on page C-4, which will become a part of a K-12 regulation on physical education and the second half of the first paragraph under A.2., page C-1, on certification requirements that reads as follows: "Beginning and newly employed teachers, administrators and counselors who work in middle level programs shall, by September, 1998, hold either a middle level endorsement or certificate. This endorsement or certificate will assure that the middle level educator has knowledge of the middle level curriculum and the instructional strategies as well as understanding the nature and needs of adolescent students".

Presently Section III of the Handbook is divided into three parts: Part A, Middle Level Education Policy, Part B.1., Middle Level Programs and Part B.2., Additional Middle Level Requirements. Part B.2., Additional Middle Level Requirements includes the following subtitles: a., Programs in English Language Arts, Mathematics, Social Studies and Science; b., Visual and Performing Arts (music, visual arts, theater and dance); c., Gifted and Talented Education; d., Comprehensive Health Education and Family Life Education; e., Physical Education; f., Home Economics; g., Instruction in the Constitution of the United States; h., Metric System; i., Consumer Education; j., Minimum Class Periods and k., Pre-Vocational Courses.

Part B.1. is simply a listing of program titles for technical assistance purposes. Items B.2.a. and b. are covered by an existing regulation, item c. is a technical assistance statement, item d. is a reference to an existing regulation and is only repeated here for Technical Assistance purposes, item e. will be amended as a separate regulation, items g., h., and i. were repealed previously and items j. and k. are regulated in the

requirements that must be met to receive Vocational-Technical Educational funding units.

With the exception of the certification requirements, Parts A.1. and 2., of the Middle Level Education Policy are being recommended for repeal because it is the position of the Secretary and the State Board of Education that although the remaining elements of the existing policy represent excellent strategies and are research based, the organization of Middle Level Education programs should be left to the discretion of the local school districts and local Boards of Education. The Department of Education will continue to support this model for middle level programs through the certification requirements and technical assistance efforts and to provide other research based data on programming for middle level students but final decisions on the organization of middle level programs will be local decisions.

FROM HANDBOOK FOR K-12 EDUCATION

**III. MIDDLE LEVEL EDUCATION**

**A. MIDDLE LEVEL EDUCATION POLICY**

**1. PHILOSOPHY**

~~The State Board of Education recognizes that Middle Level Education is special and unique in the state's educational system. As such, it is a broad-based program that provides young adolescents with a positive environment during their transition years. It emphasizes the development of the student in the academic, physical, social and emotional realms within a community of learning and caring.~~

~~The State Board of Education also recognizes that those who administer effective middle level programs and those who teach and work in them should be appropriately educated for, and personally committed to, the process of helping each student succeed and become future oriented.~~

**2. REQUIREMENTS FOR MIDDLE LEVEL EDUCATION PROGRAMS**

~~By September, 1996, every public school in Delaware with students in consecutive grades within the range of grades 5 through 8 shall organize those students into middle level programs either as separate schools or as a separate school within a school. Additionally, Beginning and newly employed teachers, administrators and counselors who work in middle level programs shall, by September, 1998, hold either a middle level endorsement or certificate. This endorsement and/or certificate will assure that the middle level educator has knowledge of the middle level curriculum and instructional strategies as well as an understanding of the nature and needs of young adolescent students.~~

~~The following are the essential components of a program designed to meet the learning styles and developmental needs of middle level students. These components of effective Middle Level Education shall be implemented by all reorganized middle level schools:~~

~~a. A comprehensive core curriculum for all~~

students with a planned sequence of concepts and skills including, but not limited to: communication skills, multicultural literacy, humanities, social sciences, mathematics, natural sciences, fine and performing arts, critical/creative thinking, family life/parenting education, health and wellness education, technological literacy and the exploration of occupational and personal interests.

b. Grouping of students into smaller heterogeneous learning communities within the larger school.

c. Interdisciplinary teams of teachers who share responsibility for instruction of the same students, integrate subject matter, and collaborate to meet changing developmental and instructional student needs.

d. Counseling, mentoring and career exploration programs designed to assist students with personal and future decision making, particularly decisions related to high school program choices.

e. Co-curricular activities, including opportunities for volunteerism, which are varied and related to the current interests and developmental stages of middle level students.

f. Staff development programs designed specifically for middle level practitioners based upon the unique needs of middle level students and programs.

g. A school climate where positive relationships with adults and other students create an atmosphere conducive to personal and academic growth as well as a sense of security and structure.

h. Cooperative relationships with health and social service agencies which provide students with the health and family support systems.

i. Partnerships emphasizing a supportive role be developed and maintained with families, business and industry, agencies serving youth and their families, elementary and high school staff and students, and higher education institutions, to help assure the success of middle level students.

The Department of Public Instruction shall provide technical assistance to the districts and schools to assure an effective transition and to help schools organize their programs. Program Guidelines for Middle Level Education will serve as the basis for operating, evaluating, and organizing middle level education.

(State Board Approved April 1991, Revised March 1995)

## B. PROGRAMS

### 1. MIDDLE LEVEL PROGRAMS

- a. English/Language Arts
- b. Math
- c. Science
- d. Social Studies
- e. Visual and Performing Arts
- f. Foreign Language
- g. Gifted and Talented Education

h. Health and Family Life Education

i. Physical Education

j. Pre-Vocational-Technical Education Orientation/Exploration

k. Home Economics and Family Life/Parenting Education

l. Technology Education

### 2. ADDITIONAL MIDDLE SCHOOL REQUIREMENTS

a. Programs In English Language Arts, Mathematics, Science and Social Studies

(1) Middle level school programs in English language arts, mathematics, science and social studies must be aligned with the state content standards as adopted by the State Board of Education in June, 1995.

b. Visual and Performing Arts (music, visual arts, theatre, dance)

(1) All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

c. Gifted and Talented Education

(1) Refer to Programs for Gifted and Talented Students in the State of Delaware, an annual publication for specific district and higher education program offerings. Also, see "Low-Cost Options for Students with Special Gifts & Talents" (Appendix E) and "Program Standards for Gifted and Talented Programs in the State of Delaware" (Appendix F).

d. Comprehensive Health Education and Family Life Education

Based on the Comprehensive Health Education and Family Life Education Policy, Health and Family Life Education must be provided in grades 5 and 6 for thirty-five (35) hours in each grade of which fifteen (15) hours in each grade must address Drug/Alcohol Education. In grades 7 and 8, separate from other subject areas, there must be a minimum of sixty (60) hours of Comprehensive Health Education of which fifteen (15) hours in each grade must address Drug/Alcohol Education. If all of the sixty (60) hours are provided in one year at grade 7 or 8, an additional fifteen (15) hours of Drug and Alcohol Education must be provided in the other grade. (See Page A-55 of the Handbook for this Policy, State Board Approved September 1987, Revised July 1990)

e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

f. Home Economics

Program offerings in home economics and technology education must be available to all students in middle school to insure that they have the exploratory experience and elective studies to develop their special interest skills. It is essential that these programs be staffed by certified home economics and technology education teachers.

g. ~~Instruction in the Constitution of the United States~~

~~In the area of social studies, Delaware Code requires that --~~

~~“The instruction in the Constitution of the United States and the Constitution and government of the State of Delaware shall begin not later than opening of the eighth grade...” (See Page A-39 of the Handbook for 14 Del. C. Section 4103)~~

~~This requirement must be met through units included in the social studies curriculum.~~

h. ~~Metric System~~

~~A unit of instruction must be provided on the metric system of measurement. This instruction may be offered as part of the science or mathematics curriculum. (See Page A-39, State Board Approved February 1974)~~

i. ~~Consumer Education~~

~~Fifteen classroom hours of introductory study in consumer education is also required in middle level programs. (See Page A-37 State Board Approved Requirement, May 1975)~~

j. ~~Minimum Class Periods~~

~~Although the maximum number of periods allocated to any subject area is left to the discretion of the individual school, it should be emphasized that minimum and appropriate instructional time be devoted to all subject areas. Educational needs of students based upon appropriate diagnostic techniques should aid in determining the number of class sessions per week as well as class length.~~

~~(1) The minimum amount of time a subject shall meet per week must not be less than two periods or the equivalent of 90 minutes per week of class time. Schools should endeavor to provide class instruction beyond the minimum required.~~

k. ~~Pre-Vocational Courses~~

~~State Board approval for funding pre-vocational courses (99.0200) will be contingent upon meeting approved State content standards for pre-vocational education courses and shall be designated as such, independent of any other course, and offered as a self-contained vocational subject as described in b. of this section. (State Board Approved July 1987)~~

**UNIT COUNT****EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)**

A. TYPE OF REGULATORY ACTION REQUESTED  
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks to amend the regulations on the unit count system found in the document entitled, A Summary of Policies, Rules and Regulations for Student Accounting for the September 30<sup>th</sup> Enrollment and Unit Computation. The Delaware unit system for funding schools established in Title 14 of the Delaware Code, evolved into a system of 16 types of regular, special education, vocational, and combinations of regular, special and vocational units. The Department of Education is empowered to adopt rules and regulations for the administration of the September enrollment count upon which the unit calculations are based. The rules and regulations assist schools and school districts in preparing their September enrollment counts. The amendments to these regulations are designed to clarify the information in the existing document by separating the specific regulatory material from the technical assistance and from the Del. Code references. The amended regulations clearly state what the Department of Education is regulating. One specific change that was made was to add (as shown in its amended form) “prior to November 1st” to the end of the sentence a.(3) and a.(5) under #4 Programs, Situations, and Program Types for Inclusion in the Unit Count. This requires that the students in these situations must be in school by November 1st, in order to be included in the unit count. The second specific change was to state in #4.a.(7) (as shown in its amended form) that all pre-kindergarten students with disabilities shall be counted as full-time special education students. Previously these pre-kindergarten students were subject to the 12 ½ hour rule and for students served in non-school settings this required a waiver. All other changes, as stated above, were made for the clarity and focus of the regulations and not for substance.

C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations do not address curriculum issues, they address the funding system for education.

2. Will the regulation help ensure that all students receive an equitable education?

The amended regulations provide for an equitable system of funding for students in the State.

3. Will the amended regulations help to ensure that all

students' health and safety are adequately protected?

The amended regulations do not address health and safety issues, they address the funding system for education.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations do not address students' legal rights, they address the funding system for education.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place any unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will be consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

The Del. C. directs the Department of Education to make the regulations that are necessary in order to carry out the unit count process.

10. What is the cost to the state and local school boards of compliance with the amended regulations?

There are no additional costs associated with these amended regulations.

## AS CURRENTLY EXISTS POLICIES

In the implementation of Title 14, Delaware Code,

Sections 1704 and 1710, it is the policy of the State Board of Education that:

1. Students of authorized age who are attending their authorized or choice/charter schools are included in the September enrollment count.

2. Regulations for the enrollment count accommodate State requirements and as necessary accommodate and maintain consistency with federal program and reporting requirements.

3. School districts maintain accurate and auditable records so that the Department of Education and/or the State Auditor of Accounts can efficiently audit the enrollment count.

4. Unit counts, based on reported enrollments, are calculated by the district, verified by the Department of Education and certified by the State Board of Education. This certification will be adjusted whenever audit findings warrant.

5. The Secretary of Education may exercise discretion, within the law, by temporarily modifying the regulations for the enrollment count as required by extenuating circumstances.

## ELIGIBILITY FOR THE ENROLLMENT COUNT

### Overview

The rationale for determining who is included in the September 30 enrollment count and how each enrollee is counted begins with student residence. Students must attend school in their district of residence unless tuition arrangements are in effect with another school district. State Board of Education policy authorizes their enrollment in another district, or they have elected to enroll under school choice or charter school options. Second, students must meet the age parameters, generally 5-20 years, with an exception for handicapped students.

Whether a student is "enrolled" on September 30 is the third aspect determining who may be counted. Enrollment means attending school sometime during the last 10 school days of September or having a legitimate reason for not attending. Supporting documentation must be on file indicating the reason for absence, the reason the student is expected to return, and an expected return date.

Each enrollee is classified into one of the following enrollment groups, pre-kindergarten (applicable to handicapped students), kindergarten, grades 1-3, grades 4-6 or grades 7-12. Enrollees are further divided into one of three types of student programs:

- (1) regular
- (2) full-time special education
- (3) a combination of regular and special education (part-time special):

Students in grades 7-12 may be enrolled in vocational programs in addition to being in regular, full-time special or part-time special programs. Eligibility determinants are shown in the flow chart on the next page.

**Residence and Age**

Residence and student age requirements for participating in public schools (including choice and charter) are part of Delaware Code, Title 14, Sections 202(a), 202 (c) (Choice), 501 and 506 (Charter), 1703(K), 2702(a), and 3101(3) (4) (5):

**Enrollment**

An opinion of the Attorney General, Opinion No. 79-1017, dated May 24, 1979, defines enrollment as follows:

Unless there is reason to believe that a pupil's attendance during the ten-day period (last 10 days of school in September) is fleeting or momentary, his presence in school for all or part of the 10 days effectively "enrolls" him as of the last day of September for the school year.

For students not in attendance during the last 10 school days of September, the following information must be on file to substantiate their inclusion in the enrollment count:

1. Reason for absence and date of last direct contact with student or parent.
2. Reason to believe that student will be returning to school.

**Within-State Transfer Students**

Districts enrolling a within-state transfer student during the last ten school days of September must notify the student's previous district of such enrollment. The notification must be by fax with a follow-up letter to the previous district central office. The notification must be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district is exempted from this notification requirement.

Failure to follow the notification procedure may result in including the same student in two different district enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district's enrollment and unit count.

Copies of the fax transmittals and follow-up letters must be on file to substantiate the student's inclusion in the receiving district's enrollment and unit count.

**Programs and/or Situations that Qualify**

Students in the following programs and/or situations qualify for inclusion in the enrollment count:

- **HB-247 Alternative Education Program:** A student enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled

in the next vocational course in the program series.

- **Part-time Alternative Vocational Education Program:** A student who is qualified for free public education in Delaware according to the provisions of 14 Del. Code, Sec. 202, who is not regularly enrolled in a secondary school in the State, but who is enrolled and attending James H. Groves High School or an approved General Education Development program or an approved Adult Basic Education program may be counted in the secondary vocational unit count, if enrolled full time (i.e., 900 minutes per week) in a vocational program in a vocational-technical school district, but may not be counted in the secondary academic unit.

- Full-time alternative vocational education programs as defined by the State Board of Education guidelines:

- **Delaware Adolescent Program, Inc. (DAPI):** A girl enrolled in DAPI on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, she may continue to be reported for the same level of special education service as she received during the previous year. If enrolled the previous year in a vocational program in the reporting school, she may continue to be reported as enrolled in the next vocational course in her program series.

- **Advanced placement in college:** Students must be enrolled in at least one full credit high school course:

- Temporary medical problem which precludes school attendance:

- Supportive home-bound instruction.
- **Stevenson House or New Castle County Detention Center:** Students on a temporary basis pending disposition of case who will return to school in October.

- **Authorized out-of-district tuition students** may be included in the enrollment count of the district serving the student.

- **Four-year old "gifted or talented" students** are recorded in the grade level enrollment group to which they are assigned:

- Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities are:

Terry Children's Psychiatric Center Residential Treatment Centers

Delaware State Hospital

Delaware Correctional Center

Hospital for the Mentally Retarded

Alfred I. duPont Institute

Ferris School for Boys

**Programs and/or Situations that DO NOT Qualify**

Students in the following programs and/or situations do not qualify for inclusion in the enrollment count:

- Students who have not attended during September for reasons such as being out of the district, on vacation, or family business:

- Students who have not attended during September and have not documented an acceptable cause for absence but are expected to begin attending during October:

- Students who are enrolled in General Education Development (GED) programs:

- Students who are enrolled in other than State Board of Education approved programs:

- Students who are transferred to a state residential facility during September may not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal. (See Students enrolled in residential facilities above.)

### Enrollment Groups and Computation

Pre-Kindergarten are handicapped students who are below kindergarten age. Pre-kindergarten students receive at least 12-1/2 hours per week of special education services and are counted as full-time special students.

Kindergarten, Grades 1-3, 4-6, 7-12 are statutorily defined groups. Ungraded students are reported according to the grade of their cohort age group.

### Program Types

#### a. Regular Programs

Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects which most students take.

#### b. Full-time Special Education Programs

Students who have been properly diagnosed, placed in a special program, and receive instruction from a certified special education teacher for at least 12-1/2 hours per week. Special students must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in the Administrative Manual: Programs for Exceptional Children.

#### c. Part-time Special Education Programs

Part-time special education programs include students who receive less than 12-1/2 hours of special service per week, but meet all other criteria for full-time special education services. Part-time special education students, for unit computation, have their time apportioned between:

- (1) a regular student in a specified grade, and
- (2) a special student in a specified category.

The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade Learning Disabled student receives 11.5 hours of special education service per week, the student is counted as a .77

LD student ( $11.5/15 = .77$ ) and a .23 second grade regular student. This accounts for one FULL-TIME EQUIVALENT STUDENT ( $.77 + .23 = 1.0$ ):

#### d. Vocational Programs

Vocational programs may also include students enrolled in regular or special education programs in grades 7-12. Regular or special education students who are enrolled in State Board of Education approved vocational education courses are included in the vocational enrollment and unit count.

A maximum of 900 minutes of vocational time per week per student is credited toward the vocational unit determination. Students who attend full-time, 900-minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.

A vocational unit is based on 27,000 pupil minutes in an approved vocational program. The basis for computing the vocational unit follows: 30 students per teacher [class load 15 to 1 in two 3-hour sessions] times 900 minutes per week instruction for a full-time vocational student [180 minutes per day x 5 days per week] equals 27,000 pupil minutes to the unit [ $30 \times 900 = 27,000$ ].

The "vocational deduct" is applied to partially compensate for double counting vocational students. The deduction is applied against regular and special units since the vocational programs reduce the regular and special program student loads. The deduction is computed on a district basis as follows: The number of Division I vocational units earned in the district's schools plus the number of "other" vocational units earned by the district's regular and special students attending vocational programs in other districts (area vocational schools) divided by two (2) equals the deduct. The deduction is always rounded off to a whole number. For example:

District vocational units	20
"Other" vocational units	+11
	$31 - 15.5 = 15$ deduct
	2

### Special Situations Regarding Enrollment

All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and must be received by the Secretary for

- consideration prior to September 30. Exceptions are difficult to justify after the September 30 date.
- Students with multiple handicaps are reported in the category that corresponds to their major handicapping condition:

- Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement must meet the evaluation and placement requirements found

in Sections E14 page 37 and F10 page 46 of Administrative Manual: Programs for Exceptional Students, revised July 1, 1993, Amended August 9, 1993.

**Record Keeping Related to Enrollment Count**

An accurate district enrollment report depends upon accurate school records. The accuracy of school records depends upon four things:

- a. The accuracy of each school's process for enrolling students, recording attendance, and recording services rendered;
- b. The quality of the district's system for collecting and aggregating the school data;
- c. The accuracy of the mathematics involved; and
- d. The verification of the various enrollment forms for internal consistency.

Each school must maintain September enrollment records in a manner which will allow for efficient enrollment audits by the State Department of Education and/or the State Auditor of Accounts. At the end of September, each school should assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file must be retained in the school for at least three years.

Records to substantiate special education students included in the enrollment count should contain: student name, cohort age group, grade level, handicapping condition, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual files may be reviewed by the State Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide special education students as per the Administrative Manual: Programs for Exceptional Students. The required documents and/or reports required to verify special education placement are summarized on the chart on the following page.

**Co-Operative Education**

The following documents must be in place and in the student's file prior to inclusion in the co-operative education unit count:

- 1. A student-employer training agreement signed by a parent or guardian, the employer, the student and the teacher.
- 2. A State Child Labor Work Permit for Minors signed before employment begins by the student's parent or guardian (ages 14-15 only), employer and issuing school officer.

**1997-98 School Year Units**

Units in each category are determined by dividing the district full-time equivalent (FTE) enrollment in each category

by the specified divisor. The dividend, when rounded off, is the unit entitlement for that category. For a fraction of a unit round to the next whole number. The fraction must be a major fraction, i.e., greater than half.

The unit divisors for the 1997-98 school year follow:

Grade	Divisor
K	40
1-3	19
4-6	20
7-12	20
<b>Special Education Category</b>	
Educable Mentally Handicapped (EMH)	15
Seriously Emotionally Disturbed (SED)	10
Partially-Sighted (PS)	10
Learning Disability (LD)	8
Blind	8
Trainable Mentally Handicapped (TMH)	6
Severely Mentally Handicapped (SMH)	6
Physically Impaired (PI)	6
Hard of Hearing/Partially Deaf (HH/PD)	6
Deaf/Blind (D/B)	4
Autistic (AUT)	4

**I/LC Units**

Units for I/LC (Intensive Learning Center) students are computed by dividing the district I/LC FTE enrollment by 8.6. Only EMH, LD and SED students in the I/LC are eligible for the I/LC unit count and are reported in Column 14, District Form 2; all others are reported in their special education categories, Column 1-13.

Delaware Code, Title 14, Section 3101 (8) stipulates that students placed in an I/LC must manifest at least one of the following characteristics:

- 1. Learning difficulties so severe that he or she cannot respond to the curriculum and services normally provided in a special class for the identified handicap;
- 2. Continually exhibits disruptive behavior in a special class; or
- 3. Withdraws into himself or herself to such an extent as to be unserved in the special class authorized for his or her particular handicap.

**Exceptional Student Vocational Units**

Exceptional student vocational units are authorized for each county. The units are based on 13,500 pupil minutes per week of vocational instruction. The vocational deduct does not apply. The programs supported by these units must be approved by the State Board of Education. For 1997-98, the following school programs have received State Board of Education authorization: Wallace Wallin, Polytech I/LC, Sussex Vocational Technical I/LC, and New Castle County Vocational Technical I/LC. Since the unit computation is

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different and no deduct is required, these units must be calculated independently of other district vocational units:

## School Choice Enrollment Roster

All out-of-district Choice students included in the unit count must be listed on the enrollment roster (District Form 4). The roster provides the basis for transferring local funds attached to Choice students, provides transportation reimbursements for applicable Choice students, and provides an audit trail to the Choice system. Instructions for completing the roster are on the back of the form.

## Nontraditional High School Schedules & the School Year 97-98 Unit Count

Some of Delaware's high schools have initiated nontraditional class schedules such as block or rotating class periods. These schedules may result in a part or full-time special education student receiving for part of the year more or less instruction from a special education teacher per week than the IEP requires. Similarly, vocational class time for part of the year may be more or less per week than found in the traditional schedule. However, over the course of the year these students would receive the same amount of instruction as under a traditional schedule.

For unit count purposes for SY 97-98, if a special education student or a vocational student in a school utilizing nontraditional schedules receives during the course of the year the same amount of instruction he would have received under a traditional class schedule, the district may average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

The following exemplifies this situation for a full-time vocational/and or special education student:

Fall Vocational = 300 minutes per week  
 Spring Vocational = 1500 minutes per week  
 = 1800 / 2 = 900 minutes per week

Fall Special Education = 7.5 hours per week  
 Spring Special Education = 17.5 hours per week  
 = 25.0 / 2 = 12.5 hours per week

AS AMENDED

## UNIT COUNT REGULATIONS

### 1. Forms and Record keeping

a. All information submitted through the unit count process shall be on the forms provided by the Delaware Department of Education or in such other format as may be acceptable to the Department.

b. Each school shall maintain September enrollment records in a manner which will allow for efficient enrollment audits by the Delaware Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

c. Records to substantiate special education students included in the enrollment count shall contain: student name, cohort age group, grade level, handicapping condition, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Delaware Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide special education students as per the Administrative Manual: Programs for Exceptional Students.

### 2. Special Situations Regarding Enrollment

a. All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

b. Students with multiple handicaps shall be reported in the category that corresponds to their major handicapping condition.

c. Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in the Administrative Manual: Programs for Exceptional Children.

d. Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

### 3. Accounting for Students Not in Attendance the Last Ten Days in September.

a. For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

(1) Reason for absence and date of last direct contact with student or parent.

(2) Reason to believe that student will be returning to school before November 1st.

(3) Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district of such enrollment. The notification shall be by fax with a follow-up

letter to the previous district central office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district's enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving district's enrollment and unit count.

#### 4. Programs, Situations and Program Types that Qualify For Inclusion in the Unit Count

a. Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

(1) Delaware Adolescent Program, Inc. (DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next vocational course in the program series.

(2) Advanced placement in college: Students shall be enrolled and attend at least one full credit course in their high school.

(3) Temporary medical problem which precludes school attendance prior to November 1st.

(4) Supportive home-bound instruction provided by the reporting school.

(5) Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.

(6) Four-year old "gifted or talented" students recorded in the grade level enrollment group to which they are assigned.

(7) All pre-kindergarten students with disabilities shall be counted as full-time special education students.

(8) Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

(9) Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects which most students take.

(10) Full-time Special Education Programs - Students

who have been properly diagnosed, placed in a special program, and receive instruction from a certified special education teacher for at least 12-1/2 hours per week. Special students must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in the Administrative Manual: Programs for Exceptional Children.

(11) Part-time Special Education Programs - Part-time special education programs include students who receive less than 12-1/2 hours of special service per week, but meet all other criteria for full-time special education services. Part-time special education students, for unit computation, have their time apportioned between a regular student in a specified grade and a special student in a specified category.

(a) The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade Learning Disabled student receives 11.5 hours of special education service per week, the student is counted as a .77 LD student ( $11.5/15 = .77$ ) and a .23 second grade regular student. This accounts for one FULL-TIME EQUIVALENT STUDENT ( $.77 + .23 = 1.0$ ).

#### 5. Programs and/or Situations that Do Not Qualify for the Unit Count

a. Students in the following programs and situations do not qualify for inclusion in the enrollment count:

(1) Students who have not attended school during the last 10 days of September.

(2) Students who are enrolled in General Education Development (GED) programs.

(3) Students who are enrolled in other than Delaware Department of Education approved programs.

(4) Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal.

#### 6. Nontraditional High School Schedules

a. For unit count purposes if a special education student or a vocational student in a school utilizing nontraditional schedules receives during the course of the year the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student:

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Fall Vocational = 300 minutes per week

Spring Vocational = 1500 minutes per week

$1800 / 2 = 900$  minutes per week

Fall Special Education = 7.5 hours per week

Spring Special Education = 17.5 hours per week

$25.0 / 2 = 12.5$  hours per week

## 7. Charter Schools

a. Charter schools shall be allowed the following options in calculating their unit count:

(1) using the standard public school procedure: major fraction unit rounding rule in each category.

(2) adding the fractional units in each category and using the major fraction unit rounding rule on the total.

## 8. Unit Adjustments After Audit

a. If after the units are certified by the Secretary of Education, students are disqualified through the auditing process from the unit count, the units will be recalculated without those students. Other eligible students shall not be substituted for the disqualified students.

## DELAWARE TESTING REQUIREMENTS FOR INITIAL LICENSURE

### EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL. C., SECTION 122(d)

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the approval of the State Board of Education to amend Chapter III of the General Regulations of the Manual for Certification of Professional Public School Personnel, pages 9 through 16, entitled Delaware Testing Requirements for Initial Licensure. The amendments to this chapter require that anyone seeking employment in the Delaware public school system, beginning with the 1999-2000 school year, must pass the PRAXIS I and PRAXIS II tests prior to employment. If a district chooses to hire an individual who has not taken and passed the PRAXIS I and II tests the individual will be issued a non renewable Limited Standard Certificate for the fiscal year of the initial employment only. These amended regulations also include regulations on the minimum qualifying scores for the tests, testing timelines, and taking the tests multiple times.

#### C. IMPACT CRITERIA

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations should help to improve student achievement since these amendments require all teachers seeking employment in the public schools of Delaware to have passed the PRAXIS II test demonstrating their content knowledge.

2. Will the amended regulations help ensure that all students receive an equitable education?

These amended regulations do not address equity issues.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

These amended regulations do not address health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

These amended regulations do not address students' legal rights.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations still allow the local school districts to hire someone for one year if they have not passed the PRAXAS I and II tests but the employee will only receive a nonrenewable Limited Standard Certificate.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations will not place any unnecessary reporting or administrative requirements or mandates upon the decision makers at the local board and school levels and may reduce administrative record keeping concerning the retaking of the PRAXIS I test.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

Decision making authority and accountability for addressing the subject will remain in the same entity.

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will be consistent with and reinforce other state educational policies in that the regulations place higher expectations on prospective employees for

content knowledge.

9. Is there a less burdensome method for addressing the purpose of the amended regulations?

The regulations are necessary if the PRAXAS I and II tests are required for all new employees.

10. What is the cost to the state and to the local school boards of compliance with the amended regulations?

There is no cost to the state and local school boards but there will be a cost to the individual for taking the tests.

From the General Regulations of the Manual for Certification of Professional Public School Personnel

**CHAPTER III - Delaware Testing Requirements for Initial Licensure.**

**A. Initial Licensure**

Any applicant seeking initial licensure in Delaware shall provide the Office of Certification with official test scores for one or more of the following tests of essential skills in Reading, Writing and Mathematics:

The Pre-Professional Skills Tests (PPST);

-and/or-

The PRAXIS<sup>®</sup>I - Paper and Pencil Tests;

-and/or-

The PRAXIS<sup>®</sup>I - Computer Based Tests

All of the above tests were developed and administered by Educational Testing Service. The PPST has not been administered since October 1993, when it was replaced by the PRAXIS<sup>®</sup>I Tests of Essential Skills in Reading, Writing and Mathematics. The PRAXIS<sup>®</sup>I Tests are available in a paper and pencil test format that will be scheduled at three (3) Delaware sites four to six times per year; OR the PRAXIS<sup>®</sup>I - Computer Based Tests can be scheduled by the individual at local test sites, on a flexible schedule.

**1. Test Scores (revised May 1994)**

The Delaware State Board of Education has established the following minimum passing scores in the areas of Reading, Writing and Mathematics for each of the Tests of essential skills described in the introduction above:

**a. Pre-Professional Skills Tests**

(Tests taken between 7/1/83 and 10/22/93):

Reading - 175, Mathematics - 175, Writing - 172

-and/or-

**b. PRAXIS<sup>®</sup>I - Paper and Pencil Tests (Passed 7/**

**94)**

(Tests taken on 10/23/93 and thereafter):

Reading - 175, Mathematics - 174, Writing - 173

-and/or-

**e. PRAXIS<sup>®</sup>I - Computer Based Tests (Passed 7/94)**

(Tests taken on 10/23/93 and thereafter):

Reading - 322, Mathematics - 319, Writing - 319

**2. Testing Exemptions**

a. Individuals holding Delaware certificates issued prior to July 1, 1983 or having a completed file on record with the Office of Certification as of July 1, 1983 which resulted in an evaluation letter for a certificate/license that is currently in effect, are not required to take the PPST/PRAXIS<sup>®</sup>I. The exemption based on an evaluation letter prior to July 1, 1983 shall expire on 6/30/94, since letters of that date will become invalid after 6/30/94 per Chapter I, C. 2., Evaluation for Licensure via Transcript Analysis of the General Regulations of this Manual.

b. In addition, the following licenses and/or permits do not require the PPST/PRAXIS<sup>®</sup>I:

Manager of School Food Service Program

Supervisor of School Food Service Program

Transportation Manager

Supervisor of School Bus Transportation

Administrative Support (formerly Secretarial

Personnel)

Interpreter Tutor for Hearing Impaired

Permit - Substitute Teacher

Permit - Aides

c. Scores from the California Test of Basic Skills (CTBS) are acceptable in lieu of PPST/PRAXIS<sup>®</sup>I scores under the following conditions:

(1) the scores were required to receive a certificate/license in another state and the test was taken as a condition of meeting certification/licensure requirements in that state; and

(2) the scores total 123, with at least 37 in each category; and

(3) official test scores shall be presented to the Department of Education, Office of Certification, from the Testing Center. See Chapter III, A. 5., Presentation of Test Scores to the Department of Education.

d. Effective 7/1/96, the following test scores can be used to exempt an applicant for initial Delaware licensure from the corresponding portion of the PPST/PRAXIS<sup>®</sup>I:

\* Effective 7/1/97 - SAT Tests taken after 4/1/95 and presented for exemption must meet the score indicated due to a recentering of the SAT.

**ALTERNATE TEST AND SCORE**

**PRAXIS<sup>®</sup>I EXEMPTION**

GRE Verbal 490 PRAXIS<sup>®</sup>I Reading

SAT Verbal 480 PRAXIS<sup>®</sup>I Reading

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*SAT Verbal (After 4/1/95)	560	PRAXIS <sup>®</sup> I Reading
GRE Quantitative	540	PRAXIS <sup>®</sup> I Mathematics
SAT Mathematics	520	PRAXIS <sup>®</sup> I Mathematics
*SAT Mathematics (After 4/1/95)	540	PRAXIS <sup>®</sup> I Mathematics
NTE Core Battery: Communications Skills	670	PRAXIS <sup>®</sup> I Writing

The test scores shall be presented to the Office of Certification in an official manner as described in Chapter III, A. 5., Presentation of Test Scores to the Department of Education.

### 3. Testing Timeline

a. Individuals may be hired in a Delaware public school district prior to having taken or passed the PPST/PRAXIS<sup>®</sup>I. In this situation, the employee has the period of time, from the date of hire to the end of the next, consecutive fiscal year to present passing PPST/PRAXIS<sup>®</sup>I scores to the employing school district and the Department of Education, Office of Certification, should employment remain continuous. Any Standard Aptitude Test (SAT) scores and/or Graduate Records Exam (GRE) scores and/or NTE Communication Skills scores intended to be used as an exemption for the PPST/PRAXIS<sup>®</sup>I, shall be submitted within the same timeline and scores should pre-date the employment date.

Once this period has expired, the individual will be without any valid Delaware license and employment may not be continued unless one of the following conditions is met:

(1) Official documentation is provided to the Department of Education, Office of Certification, showing successful completion of all parts of the PPST/PRAXIS<sup>®</sup>I;

-OR-

(2) Based on documented effectiveness, the superintendent of a public school district may submit a written request to the Secretary of Education to grant a third/fourth year for an individual to successfully complete all parts of the PPST/PRAXIS<sup>®</sup>I tests. The request shall include the following:

- a letter from the individual's immediate supervisor attesting to the employee's effectiveness in the position; and
- copies of the employee's evaluations (Delaware Performance Appraisal System - 3 Formative and 1 Summative) from the current school year, which demonstrate effective performance.

If the extension is granted, the individual shall:

- be placed on a one-year Temporary License at a ten (10) percent reduction in state salary; and
  - by October 31 complete training in all parts of the PPST/PRAXIS<sup>®</sup>I for which qualifying scores have not been attained, by using the Learning Plus computer tutorial package or other available training programs (see APPENDIX, "Remediation Resources for PPST/PRAXIS<sup>®</sup>I); and
  - by December 31 take the PPST/PRAXIS<sup>®</sup>I at least once; and twice during the third/fourth year of employment.
- By January 31 the district shall verify the above to the Department of Education:

b. In the event that employment is terminated from a Delaware public school district prior to passing the PPST/PRAXIS<sup>®</sup>I and prior to the end of the next consecutive fiscal year, an individual may be re-hired and be granted the amount of time remaining on the original license, to meet the testing requirement. The total time the employee shall be employed, without demonstrating passing PPST/PRAXIS<sup>®</sup>I scores, shall not exceed the amount of time from original date of hire to the end of the next, consecutive fiscal year, whether the employment remains continuous or not.

c. When employment is not involved, there is no time restriction for meeting the testing requirement; however, the test shall be taken prior to submitting an "Application for Initial Certification" (Form CPC 154) to the Department of Education, Office of Certification and testing requirements may change.

PPST/PRAXIS<sup>®</sup>I scores need not be passing to initiate the application process. Official scores that are passing shall be received prior to the issuance of any Standard license requiring the test. (See Chapter III, A. 2. a. and b., Testing Exemptions. It should also be noted that Educational Testing Service purges their records of test scores older than five years, making it difficult to present evidence of scores older than five years, without re-testing.)

### 4. Taking the Test Multiple Times

- a. There is no limit on the number of times an individual may take the PPST/PRAXIS<sup>®</sup>I.
- b. Once passed, a section need not be taken again.
- c. Passing scores in each area (Reading, Writing, Mathematics) may be attained in any testing format.

Example: - Reading - 175 (PPST), Writing - 173 (PRAXIS<sup>®</sup>I - Paper and Pencil), Math - 319 (PRAXIS<sup>®</sup>I - CBT)

### 5. Presentation of Test Scores to the Delaware Department of Education

- a. Test scores shall be official.
- b. Official scores are generally computer coded to the Department of Education at the test site, and are sent directly from Educational Testing Service to the Department of Education, Office of Certification.

c. Unopened, unaltered envelopes containing PPST/PRACTICE scores that were sent to the individual may be accepted as official. The Department of Education, Office of Certification, shall determine whether the scores are acceptable as presented.

d. If an individual cannot provide official scores as described above, the applicant may have an official set of scores sent to the Department of Education, Office of Certification, directly, by contacting the Educational Testing Service. After five years, test scores are considered invalid by ETS and re-testing is required as a means of providing official scores.

e. Direct verification from another State Department of Education will be considered as official. An original of the grade form shall be forwarded directly from the other State Department to the Delaware Office of Certification. This method shall be used only when those avenues described in 5.b., c., and d. above have been exhausted.

f. Acceptable means for providing Scholastic Aptitude Tests (SAT) and Graduate Record Exam (GRE) scores:

(1) have scores sent directly from the Education Testing Service to the Department of Education, Office of Certification.

(2) have an official college transcript forwarded directly to the Office of Certification, if a particular institution lists SAT and/or GRE scores on its transcript.

(3) have high school transcript signed and sealed by the registrar and sent directly to the Department of Education, Office of Certification, for SAT verification.

#### 6. Fees Related to Testing

It is the responsibility of the individual employee/applicant to bear any/all costs related to testing/re-testing, and the presentation of official scores to the Department of Education, Office of Certification.

#### 7. Department of Education New Employees

Effective 7/1/94, all new employees of the Department of Education are no longer exempt and shall meet the qualifying scores established in the General Regulations, Chapter III, A. 1., Test Scores. These scores shall be presented to the Office of Certification as official scores and licensure issued per the General Regulations of this Manual. See Chapter III, A. 5., Presentation of Test Scores to the Department of Education.

B. Certification Testing Data from Delaware Institutions of Higher Education with State Approved Teacher Education Programs (Effective 1/1/97)

1. The State Board of Education shall receive the same certification testing information, data or reports that are provided to each institution of higher education having a State

of Delaware approved program in education, beginning with the 1993 testing year.

2. The request for such information shall be made directly to the Educational Testing Service or other testing vendor by the Department of Education, Office of Certification only. Data or reports related to alternative test scores, SAT, GRE, and NET Core Battery, which can be used in Delaware for an exemption from specific portions of the PRAXIS I tests, shall also be provided upon request.

AS AMENDED

CHAPTER III - Delaware Testing Requirements for Initial Licensure.

#### A. Initial Licensure

##### 1. Basic Skills Tests

##### a. Initial Licensure requirements

Any applicant, with the exception of Delaware approved program graduates, seeking initial licensure in Delaware shall provide the Office of Certification with official test scores for one or more of the following tests of essential skills in Reading, Writing and Mathematics:

The Pre-Professional Skills Tests (PPST);

- and/or -

The PRAXIS™ I - Paper and Pencil Tests;

- and/or -

The PRAXIS™ I - Computer Based Tests

(1) Effective 7/1/99, State of Delaware approved program "Institutional Recommendation Forms" will guarantee that the student has demonstrated basic skills at the level required by the PRAXIS I qualifying scores (Chapter III. 1. b.). Consequently, Delaware approved program graduates will not be required to submit PRAXIS I scores/Exemption scores to the Department of Education to obtain initial certification, if they have a college/university "Institutional Recommendation Form" that documents the basic skills requirement.

(2) Effective 7/1/99, an individual seeking employment in the Delaware public schools must meet the qualifying scores on the PRAXIS I Tests of basic skills or the Exemption scores, prior to employment. Should a district choose to hire an individual who has not taken or passed the PRAXIS I Tests or provided official scores to meet the "Exemption Options" (Chapter III. 1. c. 1.) a one year non-renewable Limited Standard certificate shall be issued for the fiscal year of the initial employment only.

(3) Candidates for initial certification, other than the State of Delaware approved program graduates, shall submit PRAXIS I test scores or Exemption scores at the time of initial application for certification. Such applicants shall meet qualifying scores/Exemption scores prior to Standard certification.

b. Test Scores (revised May 1994)

# PROPOSED REGULATIONS

The Delaware State Board of Education has established the following minimum passing scores in the areas of Reading, Writing and Mathematics for each of the Tests of essential skills described in the introduction above:

(1) Pre-Professional Skills Tests

(Tests taken between 7/1/83 and 10/22/93):

Reading - 175, Mathematics - 175, Writing - 172  
- and/or -

(2) PRAXIS<sup>TM</sup>I - Paper and Pencil Tests

(Passed 7/94)

(Tests taken on 10/23/93 and thereafter):

Reading - 175, Mathematics - 174, Writing - 173  
- and/or -

(3) PRAXIS<sup>TM</sup>I - Computer Based Tests (Passed

7/94)

(Tests taken on 10/23/93 and thereafter):

Reading - 322, Mathematics - 319, Writing - 319

c. Testing Exemptions-PRAXIS I Tests only

(1) Individuals holding Delaware certificates issued prior to July 1, 1983 or having a completed file on record with the Office of Certification as of July 1, 1983 which resulted in an evaluation letter for a certificate/license that is currently in effect, are not required to take the PPST/PRAXIS<sup>TM</sup>I. The exemption based on an evaluation letter prior to July 1, 1983 shall expire on 6/30/94, since letters of that date will become invalid after 6/30/94 per Chapter I., C. 2., Evaluation for Licensure via Transcript Analysis of the General Regulations of this Manual.

(2) In addition, the following licenses and/or permits do not require the PPST/PRAXIS<sup>TM</sup>I:

Manager of School Food Service Program  
Supervisor of School Food Service Program  
Transportation Manager  
Supervisor of School Bus Transportation  
Administrative Support (formerly Secretarial

Personnel)

Interpreter Tutor for Hearing Impaired

Permit - Substitute Teacher

Permit - Aides

(3) Scores from the California Test of Basic Skills (CBEST) are acceptable in lieu of PPST/PRAXIS<sup>TM</sup>I scores under the following conditions:

(a) the scores were required to receive a certificate/license in another state and the test was taken as a condition of meeting certification/licensure requirements in that state; and

(b) the scores total 123, with at least 37 in each category; and

(c) official test scores shall be presented to the Department of Education, Office of Certification, from the Testing Center. See Chapter III, A. 5., Presentation of

Test Scores to the Department of Education.

(4) Effective 7/1/96, the following test scores can be used to exempt an applicant for initial Delaware licensure from the corresponding portion of the PPST/PRAXIS<sup>TM</sup>I:

\* Effective 7/1/97- SAT Tests taken after 4/1/95 and presented for Exemption must meet the score indicated due to a recentering of the SAT.

### ALTERNATE TEST AND SCORE

#### PRAXIS<sup>TM</sup>I EXEMPTION

<u>GRE Verbal</u>	<u>490</u>	<u>PRAXIS<sup>TM</sup>I Reading</u>
<u>SAT Verbal</u>	<u>480</u>	<u>PRAXIS<sup>TM</sup>I Reading</u>
<u>*SAT Verbal</u>		
<u>(After 4/1/95)</u>	<u>560</u>	<u>PRAXIS<sup>TM</sup>I Reading</u>
<u>GRE Quantitative</u>	<u>540</u>	<u>PRAXIS<sup>TM</sup>I</u>
		<u>Mathematics</u>
<u>SAT Mathematics</u>	<u>520</u>	<u>PRAXIS<sup>TM</sup>I</u>
		<u>Mathematics</u>
<u>*SAT Mathematics</u>		
<u>(After 4/1/95)</u>	<u>540</u>	<u>PRAXIS<sup>TM</sup>I</u>
		<u>Mathematics</u>
<u>NTE Core Battery:</u>		
<u>Communications Skills</u>	<u>670</u>	<u>PRAXIS<sup>TM</sup>I Writing</u>

Exemption test scores shall be presented to the Office of Certification in an official manner as described in Chapter III, A. 5., Presentation of Test Scores to the Department of Education.

### 2. Content and Content-Specific Pedagogy Tests-PRAXIS<sup>TM</sup>II

#### a. Tests Required for Initial Licensure in a Content Area

(1) All applicants for initial licensure in a content area listed below shall take appropriate PRAXIS<sup>TM</sup>II tests when applying for certification, effective July 1, 1999.

<u>Biology</u>	<u>Chemistry</u>
<u>Earth Science</u>	<u>General Science</u>
<u>Physical Science</u>	<u>Physics</u>
<u>Social Studies</u>	<u>English/Language Arts</u>
<u>Mathematics/ Comprehensive</u>	<u>Primary K-4</u>
<u>Special Education/ Elementary</u>	<u>Middle Level 5-8</u>
<u>Special Education/Secondary</u>	<u>French</u>
<u>Physical Education</u>	<u>Business</u>
<u>Health</u>	<u>Agriculture</u>

(2) Individuals who shall meet PRAXIS<sup>TM</sup>II qualifying scores effective 7/1/99:

(a) all first time applicants for Delaware certification in the areas listed in Chapter III, A. 2. a. 1.

(b) Individuals who currently hold

Delaware licensure in one or more area(s) but wish to attain licensure in an area listed in Chapter III. A. 2. a. 1., but are not currently employed in the Delaware public school system.

(c) candidates being admitted to the "Alternative Routes to Certification Program" for the 1998-99 school year who are seeking certification in the areas listed in Chapter III. A. 2.a. 1.

(3) Certified Delaware public school teachers employed for the 1999-2000 school year and thereafter who hold Delaware licensure in one area but wish to attain licensure in another area for which they are not currently certified that is listed in Chapter III. A. 2.a. 1.;

(a) After 7/1/99, if the area is listed in Chapter III. A. 2.a.1., the employed and certified Delaware public school teachers shall choose one of the following options to obtain standard certification:

(i) if the individual already has 15 semester hours of coursework in the content area and the appropriate methods course for that content area, and is able to meet PRAXIS<sup>TM</sup>II qualifying scores for the area listed in Chapter III. A. 2.a.1., a Standard certificate will be issued.

(ii) to obtain standard certification, the individual may complete the appropriate coursework as required in the Specific Requirements of the Certification Manual for the content area of the reassignment, as well as the appropriate methods course for the content area. By meeting this option, the individual will be exempt from meeting PRAXIS<sup>TM</sup>II qualifying scores for the area in which they have met the Specific Requirements.

b. Certified Delaware public school teachers employed for the 1999-2000 school year and thereafter, but who are not certified in an area listed in Chapter III. A. 2.a. 1. to which they have been assigned.

(1) Interim certification:

(a) Coursework Option

After completing 15 semester hours of the appropriate coursework and the appropriate methods course, when assigned to teach in an area listed in Chapter III. A. 2.a.1., the individual shall be issued a three year Limited Standard during which the specified coursework shall be completed. Entering the assignment prior to completing a minimum of 15 semester hours shall result in the issuance of a Temporary Certificate with appropriate salary based on General Regulations, Chapter II, A. 4. a. (4)

OR

(b) Testing Option

After completing 15 semester hours of the content and the appropriate methods course, if assigned to teach in an area listed in Chapter III. A. 2.a.1. prior to meeting the PRAXIS<sup>TM</sup>II qualifying scores, a one fiscal year Limited Standard Certificate shall be issued and the testing requirements shall be met within the one fiscal year of the Limited Standard. If within that fiscal year, the individual's PRAXIS<sup>TM</sup>II scores do NOT meet the appropriate qualifying

level for the content area, a two year Limited Standard Certificate may be issued while the individual completes the remaining coursework as required by the Specific Requirements of the Certification Manual for the content area of the assignment. Entering the assignment prior to completing a minimum of 15 semester hours shall result in the issuance of a Temporary Certificate with appropriate salary based on General Regulations, Chapter II, A. 4. a. (4)

c. Effective dates for the implementation of content and content-specific pedagogy PRAXIS<sup>TM</sup>II testing requirements for Delaware teachers, students attending State approved teacher education programs that are currently approved for licensure in Delaware, persons currently working on Limited Standard certificates and persons holding evaluation letters for the areas above are as follows:

(1) Effective 7/1/99, the requirement to meet the qualifying scores for the content and content-specific pedagogy PRAXIS<sup>TM</sup>II testing requirements listed in Chapter III. A. 2.a. shall apply to all first-time applicants for licensure in Delaware, as well as, to all other individuals seeking or required to seek licensure in the content areas listed above.

(2) Individual's holding Standard Elementary Certificates are not required to meet testing requirements when moving within their area of certification, that is grades 1-8. Standard Elementary certification is not valid for Kindergarten, 7th grade math and/or science, and 8th grade math and/or science, consequently the PRAXIS<sup>TM</sup>II testing requirements specified in Chapter III. A. 2.a., will be required if assigned to these areas, unless the person is employed for the 1999-2000 school year. In that case the options in Chapter III., 2. A. 3. will apply.

(3) All students graduating from State of Delaware approved teacher education programs, shall be required to meet the content and content-specific pedagogy PRAXIS<sup>TM</sup>II testing requirements listed in Chapter III. A. 2.a. prior to receiving a Standard license if graduating after 7/1/99. Students completing a program approved for Elementary 1-8, if graduating after 7/1/99, shall meet the module requirements and minimum qualifying scores indicated for both K-4 and 5-8 .

(4) Approved program graduates who have a graduation date of 6/30/98 or earlier, shall have two years from their graduation to apply for and receive certification without meeting PRAXIS<sup>TM</sup>II testing requirements. If certification is not applied for within that time frame, appropriate content testing requirements shall be imposed.

(5) Persons who have been issued a Limited Standard Certificate prior to 7/1/99, in the areas listed in Chapter III. A. 2.a., will not be required to meet the minimum qualifying scores requirements in the due course of that certificate. If the course of the certificate is interrupted for a period of two years, for any reason, the individual shall be subject to meet the PRAXIS<sup>TM</sup>II testing requirements as specified in Chapter III. A. 2.a.

# PROPOSED REGULATIONS

(6) Persons who apply for certification and have evaluation letters in their credential file at the Certification office as of 7/1/99, will be required to meet the coursework requirements stated in the evaluation letter by 6/30/02. Individuals not meeting this timeline shall meet the appropriate PRAXIS™II testing requirements listed in Chapter III. A. 2.a., as well as the remaining coursework requirements, before receiving a Standard certificate. Individuals completing coursework by 6/30/02 shall apply for and receive certification by 6/30/03.

d. Minimum Qualifying Scores required for PRAXIS™II Tests of Content and Content-Specific Pedagogy as indicated for the specific content areas of

CERTIFICATION AREA	PX II MODULES REQUIRED	PX II QUALIFYING SCORES
Biology	Biology: Content Essays (0233)	151 165
	Biology: Content Knowledge Part I (0231)	150
	Biology: Pedagogy (0234)	
Chemistry	Chemistry: Content Essays Knowledge (0242)	144 145
	Chemistry: Content Knowledge (0421)	148
	Physical Science: Pedagogy (0483)	
Earth Science	Earth Science: Content Knowledge (0571)	150 148
	Physical Science: Pedagogy (0483)	
	General Science: Content Essays (0433)	140 153
General Science	General Science: Content Knowledge Part II (0432)	148
	Physical Science: Pedagogy (0483)	
	Physical Science: Content Essays (0482)	140 159
Physical Science	Physical Science: Content Knowledge (0481)	148
	Physical Science: Pedagogy (0483)	
	Physics: Content Essays (0462)	145 130
Physics	Physics: Content Knowledge (0461)	148
	Physical Science: Pedagogy (0483)	
	English Language, Literature, and Composition: Content Knowledge (0041)	169 155 145
English	Content Essays (0042)	
	Pedagogy (0043)	
	Mathematics: Content Knowledge (0061)	140 165
Mathematics-Comprehensive	Math: Proofs, Models and Problems Part I (0063)	145

Primary Education K-4	Math: Pedagogy (0065)	
	Content Area Exercises (0012)	151 167
	Curriculum, Instruction, and Assessment (0011)	600
Middle Level 5-8	Introduction to the Teaching of Reading (0200)	
	Content Area Exercises (0012)	151 167
	Curriculum, Instruction and Assessment (0011)	600
Social Studies	Introduction to the Teaching of Reading (0200)	
	Social Studies: Analytical Essays (0082)	150 168
	Social Studies: Content Knowledge (0081)	169
Exceptional Children-Elementary	Social Studies: Pedagogy (0084)	
	Application of Core Principles across Categories of Disabilities (0352)	147 155
	Knowledge-based Core Principles (0351)	
Exceptional children-Secondary	Application of Core Principles across Categories of Disabilities (0352)	147
	Teaching Students with Behavioral/Emotional Disorders (0371)	156
	Physical Education: Content Knowledge (0091)	152 150
Physical Education	Movement Form-Analysis and Design (0092)	
	French: Content Knowledge (0173)	166
	French: Productive Language (0171)	
Agriculture Business Mathematics/ Middle School Science/Middle School Art		to be determined to be determined tbd tbd tbd

### 3. Other Considerations related to testing both PRAXIS™I Basic Skills and PRAXIS™II Content/Content Specific Pedagogy Testing

#### a. Testing Timeline

(1) Individuals may NOT be hired in a Delaware public school prior to having taken or passed the PPST/PRAXIS™I, or PRAXIS™II. Any Standard Aptitude Test (SAT) scores and/or Graduate Records Exam (GRE) scores and/or NTE Communication Skills scores intended to be used as an Exemption for the PPST/PRAXIS™I, shall be submitted prior to employment also. Should a district choose to hire someone who has not passed or shown evidence of passing the Basic Skills requirement, a Limited Standard license dated to the first fiscal year of employment will be issued. Passing scores on the PPST/PRAXIS™I, and PRAXIS™II shall be submitted before the end of the fiscal

year in which the individual was first employed. Employment may not be continued unless:

(a) Official documentation is provided to the Department of Education, Office of Certification, showing successful completion of all parts of the PPST/PRAXIS<sup>TM</sup>I/ appropriate Exemption scores and/or appropriate PRAXIS<sup>TM</sup>II qualifying scores.

(2) When employment is not involved, there is no time restriction for meeting the testing requirements (PPST/PRAXIS<sup>TM</sup>I, and PRAXIS<sup>TM</sup>II); however, the tests shall be taken prior to submitting an "Application for Initial Certification" (Form CPC 154) to the Department of Education, Office of Certification. If requirements change, persons not previously submitting passing scores, shall be subject to the new requirements. PPST/PRAXIS<sup>TM</sup>I, and PRAXIS<sup>TM</sup>II scores need not be passing to initiate the application process. Official scores that are passing shall be received prior to the issuance of any Standard license requiring the tests. (See Chapter III, A. 2. a. and b., Testing Exemptions. It should also be noted that Educational Testing Service purges their records of test scores older than five years, making it difficult to present evidence of scores older than five years, without re-testing.)

**b. Taking the Test Multiple Times**

(1) There is no limit on the number of times an individual may take the PPST/PRAXIS<sup>TM</sup>I, and PRAXIS<sup>TM</sup>II

(2) Once passed, a section or module need not be taken again.

(3) Passing scores on the PPST/PRAXIS<sup>TM</sup>I (Reading, Writing, Mathematics) may be attained in any testing format.

Example: Reading - 175 (PPST), Writing - 173 (PRAXIS<sup>TM</sup>I - Paper and Pencil), Math - 319 (PRAXIS<sup>TM</sup>I - CBT)

**c. Presentation of Test Scores to the Delaware Department of Education**

(1) Test scores shall be official.

(2) Official scores are generally computer coded to the Department of Education at the test site, and are sent directly from Educational Testing Service to the Department of Education, Office of Certification.

(3) Unopened, unaltered envelopes containing PPST/PRAXIS<sup>TM</sup>I, and PRAXIS<sup>TM</sup>II scores that were sent to the individual may be accepted as official. The Department of Education, Office of Certification, shall determine whether the scores are acceptable as presented.

(4) If an individual cannot provide official scores as described above, the applicant may have an official set of scores sent to the Department of Education, Office of Certification, directly, by contacting the Educational Testing Service. After five years, test scores are considered invalid by ETS and re-testing is required as a means of providing official scores.

(5) Direct verification from another State

Department of Education will be considered as official. An original of the grade form or a letter from the director of certification shall be forwarded directly from the other State Department to the Delaware Office of Certification. This method shall be used only when those avenues described above have been exhausted.

(6) Acceptable means for providing Scholastic Aptitude Tests (SAT) and Graduate Record Exam (GRE) scores:

(a) have scores sent directly from the Education Testing Service to the Department of Education, Office of Certification.

(b) have an official college transcript forwarded directly to the Office of Certification, if a particular institution lists SAT and/or GRE scores on its transcript.

(c) have high school transcript signed and sealed by the registrar and sent directly to the Department of Education, Office of Certification, for SAT verification.

**d. Fees Related to Testing**

It is the responsibility of the individual employee/applicant to bear any/all costs related to testing/re-testing, and the presentation of official scores to the Department of Education, Office of Certification.

**e. Department of Education New Employees**

Effective 7/1/94, all new employees of the Department of Education shall meet the qualifying scores for PPST/PRAXIS<sup>TM</sup>I established in the General Regulations, Chapter III, A. 1., Basic Skills Tests. These scores shall be presented to the Office of Certification as official scores and licensure issued per the General Regulations of this Manual. See Chapter III, A. 5., Presentation of Test Scores to the Department of Education.

**B. Certification Testing Data from Delaware Institutions of Higher Education with State Approved Teacher Education Programs (Effective 1/1/97)**

1. The State Board of Education shall receive the same certification testing information, data or reports that are provided to each institution of higher education having a State of Delaware approved program in education, beginning with the 1993 testing year.

2. The request for such information shall be made directly to the Educational Testing Service or other testing vendor by the Department of Education, Office of Certification only. Data or reports related to alternative test scores, SAT, GRE, and NET Core Battery, which can be used in Delaware for an exemption from specific portions of the PRAXIS I tests, shall also be provided upon request.

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## DEPARTMENT OF FINANCE

### Division of Revenue

Statutory Authority: 30 Delaware Code,  
Section 563 (30 Del.C. 563)

PROPOSED TAX RULING 98- June 15, 1998

### CONTRACTORS LICENSE TAX

#### A. REGULATORY AUTHORITY.

This regulation is proposed pursuant to authority granted the Director of Revenue in section 563 and is published as required by 2103(c) of Title 30 of the Delaware Code. Public Comment on this proposed regulation shall run from July 1, 1998 through July 30, 1998. Comments should be in writing and addressed to John Maciejewski, Assistant Director, Office of Business Taxes, Division of Revenue, State Office Building, 820 North French Street, Wilmington, Delaware 19801, and must be received by July 30, 1998.

#### B. GROSS RECEIPTS DEDUCTION FOR SUMS PAID TO SUBCONTRACTORS.

The purpose of this regulation is to explain the requirements for deductibility of payments made by a contractor to a subcontractor under section 2501(5) of title 30.

#### C. ISSUES AND ANALYSIS.

A contractor is defined in section 2501(1) and must meet the four separate and distinct requirements of the statute. A contractor is a person who:

1. furnishes labor or both labor and materials,
2. in connection with all or part of the construction, alteration, repairing, dismantling, or demolition of,
3. a building, road, bridge, viaduct, sewer, water or gas main, or other type of structure,
4. as an improvement, alteration, or development of real property.

A subcontractor is defined in section 2501(2) as a person who:

1. contracts directly with a prime contractor or another subcontractor,
2. to perform labor or to perform labor and provide materials in connection with such labor,
3. on a site of construction located in Delaware.

A contractor or a subcontractor is a resident or a non-resident, as the case may be. A contractor is required to notify the Division of Revenue within 10 days of entering into a

contract with a non-resident subcontractor. See section 2503.

A contractor is subject to a license tax on his gross receipts. "Gross receipts" are defined in section 2501(5) to include all sums received by a contractor for any work done, or materials supplied in connection with any real property located in this State. A contractor's gross receipts do not include sums paid to a subcontractor by the contractor, but if and only if the subcontractor is licensed and subject to the provisions of Chapter 25, the Contractors License Tax, with respect to those sums.

The definition of a "contractor" is succinct and precise and requires that a person meet each of four separate and distinct elements. The failure to meet any one of the requirements in the definition of a contractor would cause a person to be licensed under another business or occupational license.

The definition of a "subcontractor", on the other hand, is broader and literally requires that only the first prong of the contractor definition be met, along with the additional requirement that such labor or labor and material be furnished at a Delaware site of construction. Because of the disparity in definitions, a person could be a subcontractor, i.e., perform labor and provide material at a Delaware construction site but not meet the definition of contractor. For instance, a person could enter into a contract to provide and erect all scaffolding necessary to construct a five story office building. Such a person would meet the definition of a subcontractor but would not meet the definition of a contractor because the labor and material, while supplied at a Delaware construction site, are not part of the building or structure being erected. Therefore, not every payment to a subcontractor is deductible by a contractor.

The limiting language in the definition of gross receipts makes it clear that to be deductible the payment must not only be made to a subcontractor, it must be made to a subcontractor who is a "contractor" within the meaning of section 2501(1), and who performs contracting at a site of construction in Delaware.

The language also makes it clear that the subcontractor must be licensed as a "contractor" under Chapter 25 of the Delaware Code and report the payments received from the general or first contractor under the Delaware Contractors License tax. The obvious intent of the legislature in this tax scheme is to tax a contractor who pays tax at a higher rate and each subcontractor who meets the definition of a contractor only once on the sums paid to and retained by each of them for their own work rather than subjecting payments to duplicative taxation, once when paid to the contractor, and then again when paid to a qualifying subcontractor. Payments made to a subcontractor who is not a contractor within the meaning of section 2501(1) are not deductible by the party making the payment and the party receiving it pays tax under its own business license, usually general services. A contractor must still report all agreements entered into with non-resident

subcontractors whether or not the payments are deductible.

**D. REGULATION**

Payments made by a contractor to be deductible from gross receipts must be made to a subcontractor working at a Delaware construction site:

1. who meets the definition of a contractor in 2501(1) and,
2. who is licensed is a contractor under 2501(1).

Deductible payments made by a contractor that are received by a subcontractor who is licensed as a contractor must be reported under the contractor's license, even though the subcontractor may also hold additional business licenses.

A contractor deducting a payment made to a subcontractor when reporting the deductible payment must identify the qualifying subcontractor by his Delaware Contractors Business license number. A deduction claimed for a payment made to a subcontractor who otherwise meets the definition of a "contractor" but who does not hold a contractor's license will be disallowed after the effective date of this regulation.

**E. FURTHER INFORMATION**

Questions about this regulation may be directed to John J. Maciejewski, Assistant Director of Business Taxes, at (302) 577-8622.

William M. Remington  
Director  
Delaware Division of Revenue

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**PROPOSED TECHNICAL INFORMATION  
MEMORANDUM 98-2**

JUNE 8, 1998

**SUBJECT: EFFECT OF FEDERAL SMALL BUSINESS  
JOB PROTECTION ACT**

Public Comment shall run from July 1, 1998 through July 30, 1998 and comments must be received by July 30, 1998. Comments shall be made in writing to John Maciejewski, whose address appears at the conclusion of this Memorandum.

Purpose of Regulation — The purpose of this regulation is to explain the effect of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat 1755 (the Act), as it relates to Subchapter S corporations, the relationship between the classification of organizations for federal and state tax purposes and the procedures for electing entity

classification.

The Act amended Subchapter S of the IRC by revising the manner in which Federal S corporations may organize. The revisions affected among other things, the number of permissible shareholders, the types of shareholders, affiliations with other corporations, elections and reelections. In general, such revisions are applicable to the State treatment of S corporations.

Authority to make regulations; general information —

(i) The Director of Revenue is charged with the administration and enforcement of all state tax laws unless such duties are expressly conferred upon another agency. 30 Del. C. §563

(ii) Published regulations are made and promulgated pursuant to authority vested in the Director. 30 Del. C. §563

(iii) As used in published regulations, references to a section (§) number refer to a section of the Delaware Code. References to a section (§) number preceded by a "1", as in §1.1900.2, refer to sections of regulations published by the Division of Revenue of this State.

**REGULATION:**

§1.1900.2 In general; Classification of organizations for state tax purposes; election of entity classification.

(a) Meaning of terms — Any term used in these regulations shall have the same meaning as when used in a comparable context in the laws and income tax regulations of the United States referring to federal income taxes, unless a different meaning is clearly required. Any reference to the laws of the United States or to the Internal Revenue Code shall mean the Internal Revenue Code of 1986 [26 U.S.C. §1 et seq.] as amended and regulations and amendments thereto and other laws of the United States relating to federal income taxes, as the same may be or become effective, for the taxable year.

(b) Classification of entities — The classification of entities for Delaware tax purposes shall be as prescribed for federal tax purposes. Unless inconsistent with Delaware law, the provisions of Sections 1361 through 1379 of the Regulations to the Internal Revenue Code of 1986 are hereby adopted for Delaware purposes.

(c) Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSSS) as a domestic corporation that is not an ineligible corporation, if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSSS. Section 1361(b)(3)(A) provides that a corporation that is a QSSS is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSSS are treated as assets, liabilities, and items of income, deduction,

and credit of the parent S corporation.

(d) Notice of election to be classified as a QSSS — A valid election under the rules prescribed by the Internal Revenue Service by a parent S corporation to treat a wholly owned subsidiary as a QSSS shall be valid for State purposes upon making the federal election.

(e) Tax return requirements - Entities carrying on a trade or business within this State are subject to the provisions of Title 30 of the Delaware Code and are required to file income tax returns for such years. An S corporation which has elected to treat a subsidiary which is conducting business in this State as a QSSS shall be a taxable entity in this State and the items of income, deductions and apportionment factors of the QSSS shall be included on the income tax return of the S corporation.

(f) Notwithstanding subsection (e), a QSSS is subject to the licensing and gross receipts provisions of Title 30 of the Delaware Code with respect to its business activities conducted within the State.

(g) Effective date of this regulation — This regulation is effective as of January 1, 1997.

(h) Contact Person — For more information about these regulations or the classification of entities, contact John J. Maciejewski, Jr., Assistant Director, Office of Business Taxes, State of Delaware Division of Revenue, 820 N. French Street, Wilmington, Delaware 19801 or phone (302) 577-8450.

William M. Remington  
Director of Revenue

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## DEPARTMENT OF HEALTH & SOCIAL SERVICES

### DIVISION OF PUBLIC HEALTH

#### OFFICE OF HEALTH FACILITIES LICENSING AND CERTIFICATION

Statutory Authority: 16 Delaware Code,  
Section 9110 (16 Del.C. 9110)

The Office of Health Facilities Licensing and Certification, Division of Public Health of the Department of Health and Social Services, will hold public hearings to discuss proposed major revisions to the Delaware Rules and Regulations Governing the Application and Operation of Managed Care Organizations. The proposed regulations describe the Certificate of Authority application requirements, general requirements, quality assurance and operations, enrollee rights, and administrative requirements for Managed Care Organizations operating or desiring to operate in the State.

Public Hearings will be held on the following dates and

locations:

1. July 28, 1998 at 9:00 AM in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware

2. July 30, 1998 at 10:00 AM in Rooms 1 and 2, Springer Building, DHSS Herman Holloway Campus, 1901 N. duPont Highway, New Castle, Delaware.

Copies of both the proposed revised and current regulations are available for review by calling the following locations:

Office of Health Facilities Licensing and  
Certification

Three Mill Road, Suite 308  
Wilmington, Delaware 19806  
Telephone: 302-577-6666

Office of Health Facilities Licensing and  
Certification

Jesse S. Cooper Building  
Federal and Water Streets  
Dover, Delaware 19901  
Phone: 302-739-6610

Anyone wishing to present their oral comments at this hearing should contact Vanette Seals at (302) 577-6666 by July 24, 1998. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by August 3, 1998 to:

Jeffrey Beaman, Hearing Officer  
Division of Public Health  
Federal and Water Streets  
Dover, Delaware 19901

### PROPOSED RULES AND REGULATIONS GOVERNING THE APPLICATION AND OPERATION OF MANAGED CARE ORGANIZATIONS

Adopted by the Department of Health and Social Services on January 27, 1983, effective March 15, 1983.  
Revised June 15, 1998

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Appendix Certification Application

**\* PLEASE NOTE THAT THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT TO THE REGISTER.**

PART ONE  
LEGAL AUTHORITY AND DEFINITIONS

SECTION 69.0 LEGAL AUTHORITY

These regulations are adopted under Part VIII, Title 16, Delaware Code, Chapter 91, pursuant to delegation of authority from the Secretary of the Department of Health and Social Services to the Director of the Division of Public Health effective March 15, 1983 and revised July 1, 1989.

SECTION 69.1 DEFINITIONS

69.101 "Administrator/Chief Executive Officer" means the individual employed to manage and direct the activities of the MCO.

69.102 "Basic health services" means a range of services, including at least the following:

A. Physician services including consultant and referral services by a physician licensed by the State of Delaware.

B. At least three hundred sixty-five (365) days of inpatient hospital services.

C. Medically necessary emergency health services.

D. Initial diagnosis and acute medical treatment (at least one (1) time) and responsibility for making initial behavioral health referrals.

E. Diagnostic laboratory services.

F. Diagnostic and therapeutic radiological services.

G. Preventive health services including at least the provision of physical examinations, papanicolaou smears, immunizations, mammograms and childrens' eye examinations (through age 17), conducted to determine the need for vision correction performed at a frequency determined to be appropriate medical practice. Other preventive services may be provided by the MCO as contained in the Health Care Contract.

H. Health education services including education in the appropriate use of health services and education in the contribution each enrollee can make to the maintenance of the enrollee's own health. This information shall be understandable and not misleading.

I. Emergency out-of-area coverage.

69.103 "Certificate of Authority" means the authorization by the Department of Health and Social Services to operate the MCO and this certificate shall be deemed to be a license to operate such an Organization.

69.104 "Certified Managed Care Organization" (MCO) means a managed care organization which has been issued a certificate of authority under 16 Del. C. and either a certificate of authority from the Insurance Department under the relevant provisions of Title 18 or a statement from the Insurance Department that the Insurance Department certificate of authority is not required.

69.105 "Commissioner" means the Insurance Commissioner of Delaware.

69.106 "Department" means the Delaware Department of Health and Social Services.

69.107 "Emergency Care" means health care items or services furnished or required to evaluate or treat an emergency medical condition.

69.108 "Emergency Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

- (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
- (ii) serious impairment to bodily functions; or
- (iii) serious dysfunction of any bodily organ or part.

69.109 "Enrollee" means an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into with the MCO, under which the MCO assumes the responsibility to provide to such person(s) basic health services and such supplemental health services as are enumerated in the Health Care Contract.

69.110 "Geographical area" refers to the stated primary geographical area served by a MCO. The primary area served shall be a radius of not more than twenty (20) miles nor more than thirty (30) minutes driving time from a primary care office operated or contracted by the MCO.

69.111 "Health care contract" refers to any agreement between a MCO and an enrollee or group plan which sets forth the services to be supplied to the enrollee in exchange for payments made by the enrollee or group plan.

69.112 "Health care professional" means individuals engaged in the delivery of health services as licensed or certified by the State of Delaware.

69.113 "Health care services" means any services included in the furnishing to any individual of medical or dental care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury or physical disability.

69.114 "Independent Practice Association" (IPA) means an arrangement in which health care professionals provide their services through the association in accordance with a mutually accepted compensation arrangement while retaining their private practices.

69.115 "Insurance Department" means the Delaware Insurance Department.

69.116 "Insurance Department Certificate of Authority" means the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the

Delaware Code.

69.117 "Intermediary" means a person authorized to negotiate and execute provider contracts with MCOs on behalf of health care providers or on behalf of a network.

69.118 "Level 1 Trauma Center" means a regional resource trauma center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

69.119 "Level 2 Trauma Center" means a regional trauma center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this center; there may be some complex cases which would require transfer for the depth of services of a regional Level 1 or specialty center.

69.120 "Managed Care Organization" (MCO) means a public or private organization organized under the laws of any state, which:

A. provides or otherwise makes available to enrolled participants health care services, including at least the basic health services defined in 69.102;

B. is primarily compensated (except for co-payment) for the provision of basic health care services to the enrolled participants on a predetermined periodic rate basis; and

C. provides physician services directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

69.121 "Network" means the participating providers delivering services to enrollees in a managed care plan.

69.122 "Office" means any facility where enrollees receive primary care or other health services.

69.123 "Out of area coverage" refers to health care services provided outside the organization's geographic service areas with appropriate limitations and guidelines acceptable to the Department and the Commissioner. At a minimum, such coverage must include emergency care.

69.124 "Participating provider" means a provider who, under a contract with the Organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the Organization.

69.125 "Premium" refers to payment(s) called for in the Health Care Contract which must be:

- A. paid or arranged for by, or on behalf of, the enrollee

before health care services are rendered by the Organization;

B. paid on a periodic basis without regard to the date on which health services are rendered; and

C. with respect to an individual enrollee are fixed without regard to frequency, extent or cost of health services actually furnished.

69.126 "Primary Care Physician" (PCP) means a participating health care physician chosen by the enrollee and designated by the Organization to supervise, coordinate, or provide initial care or continuing care to an enrollee, and who may be required by the Organization to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee.

69.127 "Provider" means a health care professional or facility.

69.128 "Staff model MCO" means a MCO in which physicians are employed directly by the MCO or in which the MCO directly operates facilities which provide health care services to enrollees.

69.129 "Supplemental payment" refers to any payment not incorporated in premium which is required to be paid to the MCO or providers under contract to the MCO by the enrollee.

69.130 "Supplementary health services" means any health services other than basic health services which may be provided by a MCO to its enrollees and/or for which the enrollee may contract such as:

- A. Long term care;
- B. Vision care not included in basic health services;
- C. Dental services;
- D. Behavioral health services;
- E. Long term physical medicine or rehabilitative services;
- F. Pharmacy services;
- G. Infertility services; and
- H. Other services, such as occupational therapy, nutritional, home health, homemaker, hospice and family planning services.

69.131 "Tertiary services" means health care services provided for the intensive treatment of critically ill patients who require extraordinary care on a concentrated basis in special diagnostic categories (e.g. burns, cardiovascular, neonatal, pediatric, oncology, transplants etc.).

## PART TWO

### SECTION 69.2 APPLICATION AND CERTIFICATE OF AUTHORITY

69.201 No person shall establish or operate a MCO in the State of Delaware or enter this State for purposes of enrolling persons in a MCO without obtaining a "Certificate of Authority" under Chapter 91 of Title 16 of the Delaware Code. A foreign corporation shall not be eligible to apply for such certificate unless it has first qualified to do business in the State of Delaware as a foreign corporation pursuant to 8 Del. C., §371.

69.202 Each application for a certificate of authority shall be made in writing to the Department of Health and Social Services, shall be certified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Department (Appendix A) and shall set forth or be accompanied by the following:

#### A. Organizational Information

1. Brief history and description of current status of applicant, including an organization chart;
2. A copy of the basic organizational documents such as the certificate of incorporation, articles of association, partnership agreement, trust agreement or other appropriate documents and amendments thereto;
3. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant. Include all enrollees of the Board of Directors or other governing board, the principal officers in the case of a corporation, and the partners or enrollees in the case of a partnership or association; and
4. A list of positions, names and resumes for all management personnel.

#### B. Health Services Delivery

1. A description of the plan of operation of the MCO. Include the following items:
  - a) a listing of basic health services and supplemental health services (as defined at 69.102 and 69.130 respectively) with utilization projections; and
  - b) the arrangements for delivery of all covered health services (including details as to whether outpatient services are provided directly or through referrals/purchase agreements with outside fee-for-service providers); a description of service sites or facilities (specifying days and hours of operation in the case of outpatient facilities); all special policies or provisions designed to improve accessibility of services.
2. Copies of all executed contracts, agreements or arrangements between the MCO and providers, including individual physicians, IPAs, group practices, hospitals, laboratory services, nursing homes, home health agencies, and other providers. In addition, copies of executed contracts or letters of agreement between an IPA or medical group and its member or non-member physicians and other health professionals;
3. A list of participating physicians by specialty and by geographic area as well as a list of other health care

personnel providing services. Each physician included on the list must be identified as accepting or not accepting new patients and if there are any limitations on that physician's accepting any enrollees as patients. Staffing ratios shall be prepared for each geographic area in which the MCO proposes to operate. Staffing ratios are the number of physicians or providers by specialty per enrollee;

4. For staff model MCOs, a list of facilities that show the capacity, square footage, and the legal arrangements for use of the facility (leases, subleases, contract of sale, etc.). Provide copies of leases, contracts of sale, or other legal agreements relating to the facilities to be operated by the MCO;

5. All of the applicant's utilization review and utilization management, utilization control, quality assurance mechanisms, policies, manuals, guidelines, and materials including information on committee structures and criteria;

6. The arrangements for assuring continuity of care for all services provided to enrollees. Include comments on policies related to the primary care physician's responsibilities for coordination and oversight of the enrollee's overall health care and the impact of the medical record keeping system on continuity of care;

7. Procedures utilized by the applicant for determining and ensuring network adequacy;

8. Procedures utilized by the applicant for the credentialing of providers;

9. Procedures for addressing enrollee grievances;

10. Any materials or procedures utilized by the applicant for measuring or assessing the satisfaction of enrollees; and

11. Procedures for monitoring enrollee access to participating providers including but not limited to:

a) appointment scheduling guidelines;

b) standards for office wait times; and

c) standards for provider response to urgent

and emergent issues during and after business hours.

#### C. Enrollment and Marketing

1. A description of the target population, including projections of enrollment levels on a quarterly basis for at least the first three (3) years of operation and the key assumptions underlying these projections;

2. A description of the geographic area to be served, with a map showing service area boundaries, locations of the MCO's participating providers, PCPs, institutional and ambulatory care facilities, and travel times from various points in the service area to the nearest ambulatory and institutional services;

3. Identification of all information to be released to enrollees or prospective enrollees;

4. A description of the proposed marketing techniques and sample copies of any advertising or promotional materials to be used within Delaware or to which Delaware citizens would be exposed;

5. Enrollee handbooks proposed for use. A

finalized enrollee handbook shall also be submitted upon completion; and

6. Procedures for notifying enrollees of plan changes.

#### D. Financial

1. A financial statement for the most recent fiscal year certified by a Certified Public Accountant (CPA);

2. Financial projections for a minimum of three (3) years. If deficits are anticipated, the projections should cover the period up to and including the year in which break-even is expected. Include projections of revenue and expenses; a projected balance sheet; a pro forma cash flow statement; and a pro forma statement of changes in financial position. Indicate the assumptions on which statements are based, including inflation and utilization assumptions;

3. Sources of financing (private and governmental) and, where appropriate, written assurances of the availability of financing;

4. A description of all reinsurance arrangements or risk sharing arrangements with providers; and

5. The proposed premiums for all classes of enrollee, co-payments, and the rating plan or rating rules used by the applicant.

69.203 Within sixty (60) days after receipt of a complete application for issuance of certificate of authority the Department shall determine whether the applicant, with respect to health care services to be furnished, has:

A. demonstrated the ability to provide such health services in a manner assuring availability, accessibility and continuity of services;

B. arrangements for an ongoing health care quality assurance program;

C. the capability to comply with all applicable rules and regulations promulgated by the Department;

D. the capability to provide or arrange for the provision to its enrollees of basic health care services on a prepaid basis through insurance or otherwise, except to the extent of reasonable requirements of co-payments; and

E. for staff model MCOs, the staff and facilities to directly provide at least half of the outpatient medical care costs of its anticipated enrollees on a prepaid basis.

69.204 The Department shall issue a Certificate of Authority to any person filing an application under this section upon demonstration of compliance with these rules and regulations if:

A. The application contains all the information required under 69.202 of this Part;

B. The Department has not made a negative determination pursuant to 69.203 of this Part; and

C. Payment of the application fees prescribed in 16 Del. C. Chapter 91, has been made.

69.205 If within 60 days after a complete application for a certificate of authority has been filed, the Department has not issued such certificate, the Department shall immediately notify the applicant in writing of the reasons why such certificate has not been issued and the applicant shall be entitled to request a hearing on the application. The hearing shall be held within 60 days of receipt of written request therefor. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Chapter 101 of Title 29, and in accordance with applicable rules and regulations of the Department (63 Del. Laws, c.382, §1;66 Del. Laws, c. 124, §7.).

69.206 No certificate of authority shall be issued without a certificate of authority from the Insurance Department under the relevant provisions of Title 18 or a statement from the Insurance Department that the Insurance Department certificate of authority is not required.

If a deposit is required, it shall be continuously maintained in trust. In case of a deficiency of deposit, the Insurance Commissioner shall transmit notice thereof to both the MCO and the Department. In case the deficiency is not cured within the allowed time, the Commissioner shall give notice thereof to the Department and the Department shall revoke its certificate of authority to the MCO.

### PART THREE

#### SECTION 69.3 GENERAL REQUIREMENTS

69.301 Every MCO operating in this State shall file with the Department every manual which it proposes to use. Every filing shall indicate the effective date thereof.

69.302 Annual reports shall be filed with the Department by any MCO on or before June 1 covering the preceding fiscal year. Such reports shall include a financial statement of the MCO, its balance sheet and receipts and disbursements for the preceding fiscal year, and any changes in the information originally submitted or required under 69.2, 69.404.E, 69.405.B and 69.705.

#### 69.303 Contract Provisions

A. Every contract between a MCO and a participating provider shall contain the following language:

1. "Provider agrees that in no event, including but not limited to nonpayment by the MCO or intermediary, insolvency of the MCO or intermediary, or breach of this agreement, shall the provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an enrollee or a person (other than the MCO or intermediary) acting on behalf of the

enrollee for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, deductibles or co-payments, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to enrollees."

2. "In the event of a MCO or intermediary insolvency or other cessation of operations, covered services to enrollees will continue through the period for which a premium has been paid to the MCO on behalf of the enrollee or until the enrollee's discharge from an inpatient facility, whichever time is greater. Covered benefits to enrollees confined in an inpatient facility on the date of insolvency or other cessation of operations will continue until their continued confinement in an inpatient facility is no longer medically necessary."

3. The contract provisions that satisfy the requirements of Subsections 1. and 2. above shall be construed in favor of the enrollee, shall survive the termination of the contract regardless of the reason for termination, including the insolvency of the MCO, and shall supersede any oral or written contrary agreement between a provider and an enrollee or the representative of an enrollee if the contrary agreement is inconsistent with the hold harmless and continuation of covered services provisions required by Subsections 1. and 2. above.

4. Every contract between a MCO and a participating provider shall state that in no event shall a participating provider collect or attempt to collect from an enrollee any money owed to the provider by the MCO.

#### 69.304 Amendments or Revisions of Contracts

Any significant amendment to or revision relating to the text or subtext of an approved provider contract shall be submitted to and approved by the Department prior to the execution of an amended or revised contract with the providers of a MCO.

69.305 The MCO shall establish a policy governing termination of providers. The policy shall include at least:

A. Written notification to each enrollee six weeks prior to the termination or withdrawal from the MCO's provider network of an enrollee's primary care physician except in cases where termination was due to unsafe health care practice; and

B. Except in cases where termination was due to unsafe health care practices that compromise the health or safety of enrollees, assurance of continued coverage of services at the contract price by a terminated provider for up to 120 calendar days in cases where it is medically necessary for the enrollee to continue treatment with the terminated provider. In cases of the pregnancy of an enrollee, medical necessity shall be deemed to have been demonstrated and coverage shall continue to completion of postpartum care.

69.306 The Medical Director and physicians designated to

act on his behalf shall be Delaware licensed physicians.

## 69.307 Prohibited Practices

A. No MCO or representative may cause or permit the use of advertising or solicitation which is untrue or misleading.

B. No MCO may cancel or refuse to renew the enrollment of an enrollee solely on the basis of his/her health. This does not prevent the MCO from canceling the enrollment of an enrollee if misstatements of his/her health were made at the time of enrollment, or prevent the MCO from canceling or refusing to renew enrollment for reasons other than an enrollee's health including without limitation, nonpayment of premiums or fraud by the enrollee.

C. A MCO contract shall contain no provision or nondisclosure clause prohibiting physicians or other health care providers from giving patients information regarding diagnoses, prognoses and treatment options.

D. A MCO shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition where such were incurred more than twelve (12) months following the date of enrollment in such plan or, if earlier, the first day of the waiting period for such enrollment.

E. A MCO shall not impose any preexisting condition exclusion relating to pregnancy or in the case of a child who is adopted or placed for adoption before attaining eighteen years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

F. A MCO shall not offer incentives to a provider to provide less than medically necessary services to an enrollee.

G. A MCO shall not penalize a provider because the provider, in good faith, reports to state authorities any act or practice by the MCO that jeopardizes patient health or welfare.

H. A contract between a MCO and a provider shall not contain definitions or other provisions that conflict with the definitions or provisions contained in these regulations.

69.308 A MCO shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services.

69.309 A MCO shall notify participating providers of the providers' responsibilities with respect to the MCO's applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements and any applicable federal or state programs.

69.310 The rights and responsibilities under a contract

between a MCO and a participating provider shall not be assigned or delegated by the provider without the prior written consent of the MCO.

69.311 A MCO is responsible for ensuring that a participating provider furnishes covered benefits to all enrollees without regard to the enrollee's enrollment in the plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill or licensing restrictions.

69.312 A MCO shall notify the participating providers of their obligations, if any, to collect applicable coinsurance, copayments or deductibles from enrollees pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify enrollees of their personal financial obligations for non-covered services.

69.313 A MCO shall establish procedures for resolution of administrative, payment or other disputes between providers and the MCO.

## 69.314 Notice of Changes in MCO Operations

The MCO shall notify the Department of Health and Social Services in writing on an ongoing basis, of any substantial changes in organization, bylaws, governing board, provider contracts or agreements, marketing materials, grievance procedures, enrollee handbooks, utilization management program, and any change of inpatient acute care hospitals. The Department shall be notified on at least a quarterly basis of changes in the provider network.

## 69.315 Changes in Ownership Interests

Certificates of authority shall not be assignable or transferable in whole or in part. Accordingly, the holder of record of any certificate of authority to operate in Delaware, as a condition thereof, shall comply with all of the following requirements regarding changes in ownership interests. For the purposes of this section, changes in ownership interests shall refer to changes in the ownership of the holder of record of any certificate of authority and/or changes in ownership of any individual, corporation or other entity which, through the ownership of voting securities, by contract or by any other means, has the authority to or does in fact direct or cause the direction of the management and/or the policies of the MCO which is the subject of the certificate of authority at issue.

## 69.316 Examinations

A. The Department may make examinations concerning the quality of health care services of any MCO. The Department may make such examination as it deems necessary for the protection of the interests of the enrollees of the MCO,

but not less frequently than every three (3) years;

B. Every MCO shall submit its books and records relating to health care services to such examinations. In the course of such examinations, the Department may administer oaths to and examine the officers and agents of the MCO and of any health care providers with which it has contracts, agreements or other arrangements. The MCO shall require a provider to make health records available to the Department employees involved in assessing the quality of care or investigating the grievances or complaints of enrollees, and to comply with the applicable laws related to the confidentiality of medical or health records; and

C. The reasonable expenses of examinations under this section shall be assessed against the MCO being examined and remitted to the Department.

**69.317 Suspension or Revocation of Certificate of Authority.**

A. The Department may revoke or suspend a certificate of authority issued to a MCO pursuant to 16 Del. C. Chapter 91, or may place the MCO on probation for such period as it determines, or may publicly censure a MCO if it determines, after a hearing, that:

1. The MCO is operating in a manner which deviates substantially, in a manner detrimental to its enrollees, from the plan of operation described by it in securing its certificate of authority;

2. The MCO does not have in effect arrangements to provide the quantity and quality of health care services required by its enrollees;

3. The MCO is no longer in compliance with the requirements of 16 Del. C. §9104(b); or

4. The continued operation of the MCO would be detrimental to the health or well-being of its enrollees needing services.

B. Proceedings in regard to any hearing held pursuant to this section shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, 29 Del. C. §101, and any applicable rules and regulations of the Department. Any decision rendered following a hearing shall set forth the findings of fact and conclusions of the Department as to any violations of this Chapter, and shall also set forth the reasons for the Department's choice of any sanction to be imposed. The Department's choice of sanction shall not be disturbed upon appeal, except for abuse of discretion.

C. Suspension of a certificate of authority pursuant to this section shall not prevent the MCO from continuing to serve all its enrollees as of the date the Department issues a decision imposing suspension, nor shall it preclude thereafter adding as enrollees newborn children or other newly acquired dependents of existing enrollees. Unless otherwise determined by the Department and set forth in its decision, a suspension shall, during the period when it is in effect, preclude all other new enrollments and also all advertising or solicitation on

behalf of the MCO other than communication, approved by the Department, which are intended to give information as to the effect of the suspension.

D. In the event that the Department decides to revoke the certificate of authority of a MCO the decision so providing shall specify the time and manner in which its business shall be concluded. If the Department determines it is appropriate, it may refer the matter of conservation or liquidation to the Insurance Commissioner, who shall then proceed in accordance with 18 Del. C., Chapter 59. In any case, after the Department has issued a decision revoking a certificate of authority, unless stayed in connection with an appeal, the MCO shall not conduct any further business except as expressly permitted in the Department's decision and it shall engage only in such activities as are directed by the Department or are required to assist its enrollees in securing continued health care coverage.

E. The Department may require a corrective action plan from a MCO when the Department determines that the MCO is not in compliance with any of the regulations contained herein.

**69.318 Fees**

Every MCO shall pay the following fees:

A. For filing an application for a certificate of authority - three hundred and seventy-five dollars (\$375.00).

B. For filing an annual report - two hundred and fifty dollars (\$250.00).

**69.319 Confidentiality of Health Information**

Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any health care provider by any MCO shall be held in confidence and shall not be disclosed to any person except upon the express consent of the enrollee or applicant, or his physician, or pursuant to statute or court order for the production of evidence or the discovery thereof, or in the event of claim or litigation between such person and the MCO wherein such data or information is pertinent or as may be required by the Department in the course of their examinations in accordance with 69.316. The communication of such data or information from a health care provider to a MCO shall not prevent such data or information from being deemed confidential for purposes of the Delaware Uniform Rules of Evidence.

69.320 The MCO is responsible for meeting each requirement of these regulations. If the MCO chooses to utilize contract support or to contract functions under these regulations, the MCO retains responsibility for ensuring that the requirements of this regulation are met.

69.321 Specific standards may be waived by the Department provided that each of the following conditions are met:

A. Strict enforcement of the standard would result in unreasonable hardship on the MCO.

B. A waiver must not adversely affect the health, safety, welfare, or rights of any enrollee of the MCO.

C. The request for a waiver must be made to the Department in writing by the MCO with substantial detail justifying the request.

D. Prior to filing a request for a waiver, the MCO shall provide written notice of the request to each enrollee. Prior to filing a request for a waiver, the MCO shall also provide written notice of the request to the Department. The notice shall state that the enrollee has the right to object to the waiver request in writing to the Department.

Upon filing the request for a waiver, the MCO shall submit to the Department a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The MCO shall maintain proof of the method by which the requirement was met by the MCO for the duration of the waiver and make such proof available upon the request of the Department.

E. A waiver granted by the Department is not transferable to another MCO in the event of a change of ownership.

F. A waiver shall be granted for the term of the license.

## PART FOUR

### SECTION 69.4 QUALITY ASSURANCE AND OPERATIONS

#### 69.401 Health Care Professional Credentialing

A. General Responsibilities, a MCO shall:

1. Establish written policies and procedures for credentialing verification of all health care professionals with whom the MCO contracts and apply these standards consistently;

2. Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the MCO or other designated health care professional shall have responsibility for, and shall participate in, health care professional credentialing verification;

3. Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

4. Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

5. Retain all records and documents relating to a health care professionals credentialing verification process for not less than four (4) years; and

6. Keep confidential all information obtained in

the credentialing verification process, except as otherwise provided by law.

B. Nothing in these regulations shall be construed to require a MCO to select a provider as a participating provider solely because the provider meets the MCO's credentialing verification standards, or to prevent the MCO from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

C. Selection standards for participating providers shall be developed for primary care professionals and each health care professional discipline. The standards shall be used in determining the selection of health care professionals by the MCO, its intermediaries and any provider networks with which it contracts. The standards shall meet the requirements of 69.401.A and 69.401.D. Selection criteria shall not be established in a manner:

1. That would allow a MCO to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses or health services utilization; or

2. That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health services utilization.

D. Qualifications of primary care providers

1. Physicians qualified to function as primary care providers include: licensed physicians who have successfully completed a residency program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association in family practice, internal medicine, general practice, pediatrics, obstetrics, and gynecology or who are diplomats of one of the above certifying boards approved by the American Board of Medical Specialties or one of the certifying boards of the American Osteopathic Association.

E. Verification Responsibilities, a MCO shall:

1. Obtain primary verification of at least the following information about the applicant:

a) Current license, certification, or registration to render health care in Delaware and history of same;

b) Current level of professional liability coverage, if applicable;

c) Status of hospital privileges, if applicable;

d) Specialty board certification status, if applicable; and

e) Current Drug Enforcement Agency (DEA) registration certificate, if applicable.

2. Obtain, subject to either primary or secondary verification:

a) The health care professional's record from the National Practitioner Data Bank; and

b) The health care professional's malpractice history.

3. Not less than every three (3) years obtain

primary verification of a participating health care professional's:

- a) Current license or certification to render health care in Delaware;
- b) Current level of professional liability coverage, if applicable;
- c) Status of hospital privileges, if applicable;
- d) Current DEA registration certificate, if applicable; and
- e) Specialty board certification status, if applicable.

4. Require all participating providers to notify the MCO of changes in the status of any of the items listed in this section at any time and identify for participating providers the individual to whom they should report changes in the status of an item listed in this section.

#### F. Health Care Professionals Right to Review Credentialing Verification Information

1. A MCO shall provide a health care professional the opportunity to review and correct information submitted in support of that health care professional's credentialing verification application as set forth below.

a) Each health care professional who is subject to the credentialing verification process shall have the right to review all information, including the source of that information, obtained by the MCO to satisfy the requirements of this section during the MCO's credentialing process.

b) A MCO shall notify a health care professional of any information obtained during the MCO's credentialing verification process that does not meet the MCO's credentialing verification standards or that varies substantially from the information provided to the MCO by the health care professional, except that the MCO shall not be required to reveal the source of information if the information is not obtained to meet this requirement, or if disclosure is prohibited by law.

c) A health care professional shall have the right to correct any erroneous information. The MCO shall have a formal process by which a health care professional may submit supplemental or corrected information to the MCO's credentialing verification committee and request a reconsideration of the health professional's credentialing verification application if the health care professional feels that the MCO's credentialing verification committee has received information that is incorrect or misleading. Supplemental information shall be subject to confirmation by the MCO.

#### 69.402 Provider Network Adequacy

##### A. Primary, Specialty and Ancillary Providers

1. The MCO shall maintain an adequate network of primary care providers, specialists, and other ancillary health care resources to serve the enrolled population at all times. The MCO shall develop and submit annually to the

Department policies and procedures for measuring and assessing the adequacy of the network. At a minimum, the network of providers shall include:

a) A sufficient number of licensed primary care providers under contract with the MCO to provide basic health care services. All enrollees must have immediate telephone access seven days a week, 24 hours a day, to their primary care provider or his/her authorized on-call back-up provider;

b) A sufficient number of licensed medical specialists available to MCO enrollees to provide medically-necessary specialty care. The MCO must have a policy assuring reasonable access to frequently used specialists within each service area; and

c) A sufficient number of other health professional staff including but not limited to licensed nurses and other professionals available to MCO enrollees to provide basic health care services. The MCO shall cover non-participating providers at no extra cost to the enrollee if a plan has an insufficient number of providers within reasonable geographic distances and appointment times to meet the medical needs of the enrollee.

##### B. Facility and Ancillary Health Care Services

1. The MCO shall maintain contracts or other arrangements acceptable to the Department with institutional providers which have the capability to meet the medical needs of enrollees and are geographically accessible. The network of providers shall include:

a) At least one licensed acute care hospital including at least licensed medical-surgical, pediatric, obstetrical, and critical care services in any service area no greater than 30 miles or 40 minutes driving time from 90% of enrollees within the service area.

b) Surgical facilities including acute care hospitals for major surgery, and for minor surgical procedures, hospitals, licensed ambulatory surgical facilities, and/or physicians surgical practices available in each service area no greater than 30 miles or 40 minutes driving time from 90% of enrollees within the service area.

c) The MCO shall have a policy assuring access, as evidenced by contract or other agreement acceptable to the Department, to the following specialized services, as determined to be medically necessary. Such services shall be reasonably accessible and shall include:

(1) At least one hospital providing regional perinatal services;

(2) A hospital offering pediatric intensive care services;

(3) A hospital offering neonatal intensive care services;

(4) Therapeutic radiation provider;

(5) Magnetic resonance imaging center;

(6) Diagnostic radiology provider, including X-ray, ultrasound, and CAT scan;

- (7) Emergency mental health service;
- (8) Diagnostic cardiac catheterization services in a hospital;
- (9) Specialty pediatric outpatient centers for conditions including sickle cell, hemophilia, cleft lip and palate, and congenital anomalies;
- (10) Clinical Laboratory certified under CLIA; and
- (11) Certified renal dialysis provider.

d) The MCO shall make acceptable service arrangements with the provider and enrollee if the appropriate level of service is not available at no extra cost to the enrollee. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.

2. If offered by the plan, the MCO shall have a policy assuring access, as evidenced by contract or other agreement acceptable to the Department, to the following specialized services, as determined to be medically necessary. Such services shall be reasonably accessible and may include:

- a) A licensed long term care facility with skilled nursing beds;
- b) Residential substance abuse treatment center;
- c) Inpatient psychiatric services for adults and children;
- d) Short term care facility for involuntary psychiatric admissions;
- e) Outpatient therapy providers for mental health and substance abuse conditions;
- f) Home health agency licensed by the Department;
- g) Hospice program licensed by the Department; and
- h) Pharmacy services.

3. The MCO shall make acceptable service arrangements with the provider and enrollee if the appropriate level of service is not available in the service area at no extra cost to the enrollee.

#### C. Emergency and Urgent Care Services

1. The MCO shall establish written policies and procedures governing the provision of emergency and urgent care which shall be distributed to each enrollee at the time of initial enrollment and after any revisions are made. These policies shall be easily understood by a lay person.

2. Enrollees shall have access to emergency care (as defined at 69.107) 24 hours per day, seven (7) days per week. The MCO shall cover emergency care necessary to screen and stabilize an enrollee and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition (as defined at 69.108) existed.

3. Emergency and urgent care services shall include but are not limited to:

a) Medical and psychiatric care, which shall be available 24 hours a day, seven days a week;

b) Trauma services at any designated Level I or II trauma center as medically necessary. Such coverage shall continue at least until the enrollee is medically stable, no longer requires critical care, and can be safely transferred to another facility, in the judgment of the attending physician. If the MCO requests transfer to a hospital participating in the MCO network, the patient must be stabilized and the transfer effected in accordance with federal regulations at 42 CFR 489.20 and 42 CFR 489.24;

c) Out of area health care for urgent or emergency conditions where the enrollee cannot reasonably access in-network services;

d) Hospital services for emergency care; and

e) Upon arrival in a hospital, a medical screening examination, as required under federal law, as necessary to determine whether an emergency medical condition exists.

D. All enrollees shall be provided with an up-to-date and comprehensive list of the provider network upon enrollment and upon request and an update on provider changes at least quarterly.

#### 69.403 Utilization Management

##### A. Utilization Management Functions

1. The MCO shall establish and implement a comprehensive utilization management program to monitor access to and appropriate utilization of health care and services. The program shall be under the direction of a designated physician and shall be based on a written plan that is reviewed at least annually. The plan shall identify at least:

- a) Scope of utilization management activities;
- b) Procedures to evaluate clinical necessity, access, appropriateness, and efficiency of services;
- c) Mechanisms to detect under utilization;
- d) Clinical review criteria and protocols used in decision-making;

e) Mechanisms to ensure consistent application of review criteria and uniform decisions;

f) System for providers and enrollees to appeal utilization management determinations in accordance with the procedures set forth; and

g) A mechanism to evaluate enrollee and provider satisfaction with the complaint and appeals systems set forth. Such evaluation shall be coordinated with the performance monitoring activities conducted pursuant to the continuous quality improvement program set forth.

2. Utilization management determinations shall be based on written clinical criteria and protocols reviewed and approved by practicing physicians and other licensed health care providers within the network. These criteria and protocols shall be periodically reviewed and updated, and shall, with the exception of internal or proprietary quantitative thresholds

for utilization management, be readily available, upon request, to affected providers and enrollees. All materials including internal or proprietary materials for utilization management shall be available to the Department upon request.

3. Compensation to persons providing utilization review services for a MCO shall not contain incentives, direct or indirect, for these persons to make inappropriate review decisions. Compensation to any such persons may not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

**B. Utilization Management Staff Availability**

1. At a minimum, appropriately qualified staff shall be immediately available by telephone, during routine provider work hours, to render utilization management determinations for providers.

2. The MCO shall provide enrollees with a toll free telephone number by which to contact customer service staff on at least a five day, 40 hours a week basis.

3. The MCO shall supply providers with a toll free telephone number by which to contact utilization management staff on at least a five-day, 40 hours a week basis.

4. The MCO must have policies and procedures addressing response to inquiries concerning emergency or urgent care when a PCP or his/her authorized on call back up provider is unavailable.

**C. Utilization Management Determinations**

1. All determinations to authorize services shall be rendered by appropriately qualified staff.

2. All determinations to deny or limit an admission, service, procedure or extension of stay shall be rendered by a physician. The physician shall be under the clinical direction of the medical director responsible for medical services provided to the MCO's Delaware enrollees. Such determinations shall be made in accordance with clinical and medical criteria and standards and shall take into account the individualized needs of the enrollee for whom the service, admission, procedure is requested.

3. All determinations shall be made on a timely basis as required by the exigencies of the situation.

4. A MCO may not retroactively deny reimbursement for a covered service provided to an enrollee by a provider who relied upon the written or verbal authorization of the MCO or its agents prior to providing the service to the enrollee, except in cases where the MCO can show that there was material misrepresentation, fraud or the patient was found not to have coverage.

5. An enrollee must receive upon request a written notice of all determinations to deny coverage or authorization for services required and the basis for the denial.

**69.404 Grievance/Appeal Procedure**

**A. Enrollees Rights in Grievance/Appeal Procedure**

1. All MCO enrollees, or any provider acting on behalf of an enrollee with the enrollee's consent, may appeal

any utilization management determination resulting in a denial, termination, or other limitation of covered health care services. All enrollees and providers shall be provided with a written explanation of the appeal process upon enrollment, upon request and each time the methods and procedures are substantially changed and at least annually. The appeal process shall consist of an informal internal review by the MCO (Stage 1 appeal), a formal internal review by the MCO (Stage 2 appeal), and a formal external review (Stage 3 appeal) by an independent utilization review organization.

2. No enrollee who exercises the right to an appeal shall be subject to disenrollment, contract termination or otherwise penalized by the MCO solely on the basis of filing any such appeal.

3. At any stage of the appeal process, at the request of an enrollee, the MCO shall appoint a member of its staff who has no direct involvement in the case to represent the enrollee. An enrollee appealing a determination shall be specifically notified of the enrollee's right to have a staff member appointed to assist the enrollee.

4. The MCO shall maintain written records to document all appeals received (a "grievance register"). For each grievance the register shall contain, at a minimum, the following information:

- a) A general description of the reason for the grievance;
- b) Date received;
- c) Date of each review;
- d) Resolution at each level of appeal;
- e) Date of resolution at each level; and
- f) Name of the enrollee for whom the grievance was filed.

**B. Informal Internal Utilization Management Appeal Process (Stage 1)**

Each MCO shall establish and maintain an informal internal appeal process (Stage 1) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with any MCO utilization management determination, shall have the opportunity to discuss and appeal that determination with the MCO's medical director and/or the physician designee who rendered the determination. All such Stage 1 appeals shall be concluded as soon as possible in accordance with the medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. All other Stage 1 appeals shall be concluded within five business days. If the appeal is not resolved to the satisfaction of the enrollee at this level, the MCO shall provide the enrollee and/or the provider with a written explanation of his/her right to proceed to a Stage 2 appeal.

**C. Formal Internal Utilization Management Appeal Process (Stage 2)**

1. Each MCO shall establish and maintain a formal internal appeal process (Stage 2 appeal) whereby any enrollee

or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of the Stage 1 appeal, shall have the opportunity to pursue his/her appeal before a panel of physicians and/or other health care professionals selected by the MCO who have not been involved in the utilization management determination at issue. An enrollee has the right to:

- a) Attend the Stage 2 appeal;
- b) Present his or her case to the review panel;
- c) Submit supporting material both before and

at the review meeting;

d) Ask questions of any representative of the MCO participating on the panel; and

e) Be assisted or represented by a person of his or her choice.

2. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.

3. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.

4. The formal internal utilization management appeal panel shall have available consultant practitioners who are trained or who practice in the same specialty as would typically manage the case at issue or such other licensed health care professional as may be mutually agreed upon by the parties. In no event, however, shall the consulting practitioner or professional have been involved in the utilization management determination at issue. The consulting practitioner or professional shall participate in the panel's review of the case if requested by the enrollee and/or provider.

5. All such Stage 2 appeals must be acknowledged by the MCO, in writing, to the enrollee or provider filing the appeal within 14 calendar days of receipt.

6. All such Stage 2 appeals shall be concluded as soon as possible after receipt by the MCO in accordance with the medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. Except as set forth in paragraph (7) below, all other Stage 2 appeals shall be concluded within 30 calendar days of receipt.

7. The MCO may extend the review for up to an additional 30 calendar days where it can demonstrate reasonable cause for the delay beyond its control and where it provides a written progress report and explanation for the delay to the enrollee and/or provider within the original 30 calendar day review period. In no event, however, may the review period applicable to appeals from determinations regarding urgent or emergent care be so extended.

8. The review panel shall issue a written decision to the enrollee. The decision shall include:

a) The names and titles of the members of the review panel;

b) A statement of the review panel's understanding of the nature of the grievance and all pertinent

facts;

c) The rationale for the review panel's decision;

d) Reference to evidence or documentation considered by the review panel in making that decision;

e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and

f) A written notification of his/her right to proceed to an external (Stage 3) appeal.

9. In the event that the MCO fails to comply with any of the deadlines for completion of the internal utilization management determination appeals set forth or in the event that the MCO for any reason expressly waives its rights to an internal review of any appeal, then the enrollee and/or provider shall be relieved of his/her obligation to complete the MCO internal review process and may, at his/her option, proceed directly to the external appeals process.

#### D. External Utilization Appeal Process (Stage 3)

1. Each MCO shall establish and maintain a formal external review process (Stage 3) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of the Stage 2 appeal, shall have the opportunity to pursue his/her appeal before an independent utilization review organization.

2. The review panel shall schedule and hold a review meeting within forty-five (45) calendar days of receiving a request from an enrollee for a Stage 3 appeal. The review meeting shall be held during regular business hours at a location reasonably accessible to the enrollee. In cases where a face-to-face meeting is not practical for geographic reasons, a MCO shall offer the enrollee the opportunity to communicate with the review panel, at the MCO's expense, by conference call, video conferencing, or other appropriate technology. The enrollee shall be notified in writing at least fifteen (15) calendar days in advance of the review date. The MCO shall not unreasonably deny a request for postponement of the review made by an enrollee.

3. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.

4. An enrollee has the right to:

- a) Attend the Stage 3 review;
- b) Present his or her case to the review panel;
- c) Submit supporting material both before and

at the review meeting;

d) Ask questions of any representative of the MCO participating on the panel; and

e) Be assisted or represented by a person of his or her choice.

5. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.

6. The review panel shall issue a written decision

to the enrollee within five (5) business days of completing the review meeting. The decision shall include:

- a) The names and titles of the members of the review panel;
- b) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts;
- c) The rationale for the review panel's decision;
- d) Reference to evidence or documentation considered by the review panel in making that decision; and
- e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination.

E. The MCO shall include in its annual reports to the Department a description of the total number of grievances handled, the number of grievances handled at each level of appeal, a compilation of the causes underlying the appeals, and the resolution of the appeals.

#### 69.405 Quality Assessment and Improvement

##### A. Continuous Quality Improvement

1. Under the direction of the Medical Director or his/her designated physician, the MCO shall have a system-wide continuous quality improvement program to monitor the quality and appropriateness of care and services provided to enrollees. This program shall be based on a written plan which is reviewed at least semi-annually and revised as necessary. The plan shall describe at least:

- a) The scope and purpose of the program;
- b) The organizational structure of quality improvement activities;
- c) Duties and responsibilities of the medical director and/or designated physician responsible for continuous quality improvement activities;
- d) Contractual arrangements, where appropriate, for delegation of quality improvement activities;
- e) Confidentiality policies and procedures;
- f) Specification of standards of care, criteria and procedures for the assessment of the quality of services provided and the adequacy and appropriateness of health care resources utilized;
- g) A system of ongoing evaluation activities, including individual case reviews as well as pattern analysis;
- h) A system of focused evaluation activities, particularly for frequently performed and/or highly specialized procedures;
- i) A system of monitoring enrollee satisfaction and network provider's response and feedback on MCO operations;
- j) A system for verification of provider's credentials, recertification, performance reviews and obtaining information about any disciplinary action against the provider

available from the Delaware Board of Medical Practice or any other state licensing board applicable to the provider;

k) The procedures for conducting peer review activities which shall include providers within the same discipline and area of clinical practice; and

l) A system for evaluation of the effectiveness of the continuous quality improvement program.

2. There shall be a multidisciplinary continuous quality improvement committee responsible for the implementation and operations of the program. The structure of the committee shall include representation from the medical, nursing and administrative staff, with substantial involvement of the medical director of the MCO.

3. The MCO shall assure that participating providers have the opportunity to participate in developing, implementing and evaluating the quality improvement system.

4. The MCO shall provide enrollees the opportunity to comment on the quality improvement process.

5. The program shall monitor the availability, accessibility, continuity and quality of care on an ongoing basis. Indicators of quality care for evaluating the health care services provided by all participating providers shall be identified and established and shall include at least:

a) A mechanism for monitoring enrollee appointment and triage procedures including wait times to get an appointment and wait times in the office;

b) A mechanism for monitoring enrollee continuity of care and discharge planning for both inpatient and outpatient services;

c) A mechanism for monitoring the appropriateness of specific diagnostic and therapeutic procedures as selected by the continuous quality improvement program;

d) A mechanism for evaluating all providers of care that is supplemental to each provider's quality improvement system;

e) A mechanism for monitoring network adequacy and accessibility to assure the network services the needs of their diverse enrolled population; and

f) A system to monitor provider and enrollee access to utilization management services including at least waiting times to respond to telephone requests for service authorization, enrollee urgent care inquiries, and other services required.

6. The MCO shall develop a performance and outcome measurement system for monitoring and evaluating the quality of care provided to MCO enrollees. The performance and outcome measures shall include population-based and patient-centered indicators of quality of care, appropriateness, access, utilization, and satisfaction. Data for these performance measures shall include but not be limited to the following:

a) Indicator data collected by MCOs from chart reviews and administrative data bases;

- b) Enrollee satisfaction surveys;
- c) Provider surveys;
- d) Annual reports submitted by MCOs to the Department; and
- e) Computerized health care encounter data.

7. The MCO shall follow-up on findings from the program to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes and implementation of educational activities for enrollees and providers.

8. Continuous quality improvement activities shall be coordinated with other performance monitoring activities including utilization management and monitoring of enrollee and provider complaints.

9. The MCO shall maintain documentation of the quality improvement program in a confidential manner. This documentation shall be available to the Department and shall include:

- a) Minutes of quality improvement committee meetings; and
- b) Records of evaluation activities, performance measures, quality indicators and corrective plans and their results or outcomes.

#### B. External Quality Audit

1. Each MCO shall submit, as a part of its annual report due June 1, evidence of its most recent external quality audit that has been conducted. External quality audits must be completed no less frequently than once every three years. Such audit shall be performed by an independent quality review organization approved by the Department.

2. The report must describe in detail the MCOs conformance to performance standards and the rules within these regulations. The report shall also describe in detail any corrective actions proposed and/or undertaken by the MCO.

#### C. Reporting and Disclosure Requirements

1. The Board of Directors of the MCO shall be kept apprised of continuous quality improvement activities and be provided at least annually with regular written reports from the program delineating quality improvements, performance measures used and their results, and demonstrated improvements in clinical and service quality.

2. A MCO shall document and communicate information about its quality assessment program and its quality improvement program, and shall:

- a) Include a summary of its quality assessment and quality improvement programs in marketing materials;
- b) Include a description of its quality assessment and quality improvement programs and a statement of enrollee rights and responsibilities with respect to those programs in the materials or handbook provided to enrollees; and
- c) Make available annually to providers and enrollees findings from its quality assessment and quality improvement programs and information about its progress in

meeting internal goals and external standards, where available. The reports shall include a description of the methods used to assess each specific area and an explanation of how any assumptions affect the findings.

3. MCOs shall submit such performance and outcome data as the Department may request.

## PART FIVE

### SECTION 69.5 ENROLLEE RIGHTS AND RESPONSIBILITIES

69.501 The MCO shall establish and implement written policies and procedures regarding the rights of enrollees and the implementation of these rights.

69.502 In the case of non-payment by the MCO to a provider for a covered service in accordance with the enrollee's health care contract, the provider may not bill the enrollee. This does not prohibit the provider from collecting coinsurance, deductibles or co-payments as determined by the MCO. This does not prohibit the provider and enrollee from agreeing to continue services solely at the expense of the enrollee, as long as the provider clearly informs the enrollee that the MCO will not cover these services.

69.503 The MCO shall permit enrollees to choose their own primary care physician from a list of health care professionals within the plan. This list shall be updated as health care professionals are added or removed and shall include:

- A. a sufficient number of primary care physicians who are accepting new enrollees; and
- B. a sufficient number of primary care physicians that reflects a diversity that is adequate to meet the diversity needs of the enrolled populations varied characteristics including age, gender, language, race and health status.

69.504 The MCO shall provide each enrollee with an enrollee's benefit handbook which includes a complete statement of the enrollee's rights, a description of all complaint and grievance procedures, a clear and complete summary of the evidence of coverage, and notification of their personal financial obligations for non-covered services. The statement of the enrollee's rights shall include at least the right:

- A. To available and accessible services when medically necessary, including availability of care 24 hours a day, 7 days a week for urgent or emergency conditions;
- B. To be treated with courtesy and consideration, and with respect for the enrollee's dignity and need for privacy;
- C. To be provided with information concerning the MCO's policies and procedures regarding products, services, providers, grievance/appeal procedures and other information about the organization and the care provided;

D. To choose a primary care provider within the limits of the covered benefits and plan network, including the right to refuse care of specific practitioners;

E. To receive from the enrollee's physician(s) or provider, in terms that the enrollee understands, an explanation of his/her complete medical condition, recommended treatment, risk(s) of the treatment, expected results and reasonable medical alternatives. If the enrollee is not capable of understanding the information, the explanation shall be provided to his/her next of kin or guardian and documented in the enrollee's medical record;

F. To formulate advance directives;

G. To all the rights afforded by law or regulation as a patient in a licensed health care facility, including the right to refuse medication and treatment after possible consequences of this decision have been explained in language the enrollee understands;

H. To prompt notification, as required in these rules, of termination or changes in benefits, services or provider network;

I. To file a complaint or appeal with the MCO and to receive an answer to those complaints within a reasonable period of time; and

J. To file a complaint with the Department or the Commissioner.

69.505 The MCO shall establish and implement written policies and procedures regarding the responsibilities of enrollees. A complete statement of these responsibilities shall be included in the enrollee's benefit handbook.

69.506 The MCO shall disclose to each new enrollee, and any enrollee upon request, in a format and language understandable to a lay person, the following minimum information:

- A. Benefits covered and limitations;
- B. Out of pocket costs to the enrollee;
- C. Lists of participating providers;

D. Policies on the use of primary care physicians, referrals, use of out of network providers, and out of area services;

E. Written explanation of the appeals process;

F. A description of and findings from the quality assurance and improvement programs;

G. The patterns of utilization of services; and

H. For staff model MCOs, the location and hours of its inpatient and outpatient health services.

69.507 The MCO shall provide culturally competent services to the greatest extent possible.

## PART SIX

### SECTION 69.6 REQUIREMENTS FOR STAFF MODEL

#### MCOs

In addition to all other requirements of these regulations, staff model MCOs shall meet the requirements of this section.

#### 69.601 Environmental Health and Safety

A. Office premises and other structures operated by the MCO must have appropriate safeguards for patients.

B. All buildings shall conform to all State and medical codes and all regulations applicable to services being offered. These codes shall include but are not limited to:

1. State Plumbing Code.
2. Waste Disposal Regulations.
3. Public Water Supply Regulations.
4. Food Service Requirements.
5. Radiation Control Regulations.
6. Hazardous Waste Regulations.
7. Air and Water Pollution Regulations.
8. Hand washing facilities shall be installed in accordance with applicable State and local regulations and conveniently located.
9. Toilet facilities shall meet appropriate State and local regulations.
10. State Fire Code requirements.

C. The buildings must be architecturally accessible to handicapped individuals and comply with the Americans with Disabilities Act.

D. Measures must be taken to insure that facilities are guarded against insects and rodents.

#### E. Housekeeping

1. A housekeeping procedures manual shall be written and followed. Special emphasis shall be given to procedures applying to infectious diseases or suspect areas.

2. All premises shall be kept neat, clean, free of litter and rubbish.

3. Walls and ceilings shall be maintained free of cracks and falling plaster and shall be cleaned and painted regularly.

4. Floors shall be cleaned regularly and in such a manner that it will minimize the spread of pathogenic organisms in the atmosphere; dry dusting and sweeping shall be prohibited.

5. Suitable equipment and supplies shall be provided for cleaning all surfaces.

6. Solutions, cleaning compounds and hazardous substances shall be properly labeled and stored in safe places.

#### 69.602 Emergency Utilities or Facilities

A. The MCO shall be equipped to handle emergencies due to equipment failures. Emergency electrical service for lighting and power for equipment essential to life safety shall be provided in accordance with hospital regulations where appropriate. (Minimum Requirements for Construction of Hospital and Health Care Facilities, Section 7.32H.)

B. In facilities which provide hospital services, the

emergency electrical system shall be so controlled that the auxiliary power is brought to full voltage and frequency and be connected within ten (10) seconds.

C. Emergency utilities for MCOs and contract providers must be supplied according to procedures performed on the premises.

#### 69.603 Construction

A. New construction or substantial modifications on an existing facility shall conform to applicable State, county and local codes, including the National Fire Protection Association Publication No. 101 - Life Safety Code, latest edition adopted by the State Fire Prevention Board.

B. Radiation requirements of the Authority on Radiation Protection shall be met.

C. Facility plans or modifications shall be submitted to the Department for review and approval prior to any work being begun.

#### 69.604 Personnel

A. The office shall be staffed by appropriately trained personnel. Appropriate manuals shall be developed to serve as guidelines and set standards for patient care provided by nonprofessional personnel.

B. Offices with five (5) or more physicians shall have at least one (1) full time registered nurse (RN).

C. Nonprofessional personnel shall have appropriate in-service education on clinical operations and procedures. The in-service training program must be conducted at least annually.

D. Primary physician. There shall be at least one (1) full time or full time equivalent physician available on contract. There shall be at least 1 F.T.E. primary physician for every 1,000 enrollees.

E. Medical Specialties. There shall be either full time or part-time physicians, other appropriate professional specialists, or written agreements adequate to ensure access to all needed services for enrollees for consultation in internal medicine, pediatrics, general surgery, oral surgery, ENT, obstetrics and gynecology, orthopedic surgery, ophthalmology, pharmacy, radiology, physical therapy, psychiatry, nutrition and other reasonable services.

#### 69.605 Equipment

Each office operated by the MCO must have the necessary equipment and instruments to provide the required services. Equipment and instruments for services, when covered by written contract with medical specialists or other providers outside of the office, need not be present in the MCO's office. Where emergency services are provided in the office, equipment such as a defibrillator, laryngoscope and other similar equipment must be present.

#### 69.606 Specialized Services

A. The MCO shall provide special services necessary for diagnosis and treatment such as ultra sound. Where it is not feasible to provide these services in the office, there shall be a written agreement for these services in a nearby location except for isolated rural areas where arrangements for these services shall be subject to review and approval by the Department.

1. The MCO's radiology services shall be supervised and conducted by a qualified radiologist, either full time or part-time; or, when radiology services are supervised and conducted by a physician who is not a qualified radiologist, the MCO shall provide for regular consultation by a qualified radiologist, who is under contract with the MCO and is responsible for reviewing all X-rays and procedures. The number of qualified radiological technologists employed shall be sufficient to meet the MCO's requirements. If the MCO operates a radiology service and provides emergency services, at least one qualified technologist shall be on duty or on call at all times.

2. Pharmaceutical services, when provided by the MCO, must be under the direct supervision of a registered pharmacist who is responsible to the administrative staff for developing, coordinating and supervising all pharmaceutical services; or, in the case of dispensing of pharmaceuticals by a physician, such dispensing shall not violate the requirements of State law. MCOs with a licensed pharmacy shall have a Pharmacy and Therapeutics Committee. Pharmaceutical services may be provided on the premises of the MCO or by contract with an independent licensed provider. The contract shall be available for inspection by the Department at all times.

3. When the MCO provides its own emergency services, facilities must be provided to ensure prompt diagnosis and emergency treatment including adequate Emergency Room space, separate from major surgical suites. In Emergency Room facilities provided for or arranged for by the MCO there shall be as a minimum: adequate oxygen, suction, CPR, diagnostic equipment, as well as standard emergency drugs, parenteral fluids, blood or plasma substitutes and surgical supplies. Radiology facilities, clinical laboratory facilities and current toxicology including antidotes shall be available at all times.

4. Personnel shall be trained and approved by an appropriate professional organization in the operation and procedures of emergency equipment.

#### 69.607 Central Sterilizing and Supply

Autoclaves or other acceptable sterilization equipment shall be provided of a type capable of meeting the needs of the MCO and of a recognized type with approved controls and safety features. Bacteriological culture tests shall be conducted at least monthly. The maintenance program of the sterilization system shall be under the supervision of competent trained personnel.

PART SEVEN

SECTION 69.7 ADMINISTRATIVE REQUIREMENTS

69.701 Administration

The MCO shall designate an appropriate person or persons to handle the administrative functions of the MCO. These functions shall include the following responsibilities: interpretation, implementation and application of policies and programs established by the MCO's governing authority; establishment of safe, effective and efficient administrative management; control and operation of the services provided; authority to monitor or supervise the operation and in accordance with acceptable medical standards; and such other duties, responsibilities and tasks as the governing body or other designated authority may empower such individual(s).

69.702 Qualifications

Persons appointed to administrative positions in the MCO shall have the necessary current training and experience in the field of health care as appropriate to carry out the functions of their job descriptions.

69.703 Medical Privileges

Participating physicians shall have hospital privileges commensurate with their contractual obligations. Physicians must be licensed in Delaware.

69.704 Medical Records

The MCO must maintain or provide for the maintenance of a medical records system which meets the accepted standards of the health care industry and the regulations of the Department.

A. These records shall include the following information: name, identification number, age, sex, residence, employment, patient history, physical examination, laboratory data, diagnosis, treatment prescribed and drugs administered.

B. The medical record should also contain an abstract summary of any inpatient hospital care or referred treatment.

C. Regulatory agencies shall have access to medical records for purposes of monitoring and review of MCO practices.

D. Enrollees' records shall be filed for five (5) years following active status before being destroyed.

69.705 Reporting Requirements and Statistics

The MCO shall submit reports as required by these regulations.

A. The MCO shall disclose to its enrollees the following information:

1. the patterns of utilization of its services based on the information in 69.405.A.6; and

2. the location and hours of its inpatient and outpatient health services.

B. The following information is required to be submitted to the Department on an annual basis:

1. Physician visits per enrollee per year.  
2. Hospital admissions per year and per 1,000 enrollees per year.

3. Hospital days per year and per 1,000 enrollees per year.

4. Average length of stay per hospital confinement.

5. Outside consultations per year and per 1,000 enrollees per year.

6. Emergency Room visits per year and per 1,000 enrollees per year.

7. Laboratory procedures per year and per 1,000 enrollees per year.

8. X-ray procedures per year and per 1,000 enrollees per year.

9. Total number of enrollees at the end of the year.

10. Total number of enrollees enrolled during the year.

11. Total number of enrollees terminated during the year.

12. Cost of operation.

13. Current provider directory including PCPs, specialists, facilities and ancillary health care services.

14. A statistical summary evaluating the network adequacy and accessibility to the enrolled population.

15. Annual grievance/appeal report including total number of appeals, number of appeals at each grievance level, reason for appeals and resolution of appeals.

C. The following administrative reports are required by the Department whenever there is a change:

1. Full name of the Chief Executive Officer.
2. Full name of the Medical Director.
3. Address(es) of the office(s) in operation.
4. Name(s) of the hospital(s) used by the MCO

Appendix A

DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEALTH FACILITIES LICENSING &  
CERTIFICATION

302-577-6666

MCO APPLICATION FOR A CERTIFICATE OF  
AUTHORITY AND ANNUAL REPORT

A. IDENTIFYING INFORMATION

1. Name of applicant: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

# PROPOSED REGULATIONS

2. Chief Executive Officer:
3. Type of MCO: (Check one)  
 Staff                       Group Practice   
 Individual Practice Association   
 Other \_\_\_\_\_
4. Anticipated date of operation: \_\_\_\_\_
5. Area of operation, i.e., county  
 or statewide: \_\_\_\_\_

## B. Statement of Certification and Acknowledgment:

I certify that the statements made in this application are accurate, complete, and current to the best of my knowledge and belief. I understand that this application does not relieve me of any responsibility under Part VIII, Title 16, Chapter 93 of the Delaware Code (Certificate of Need).

\_\_\_\_\_  
 Signature of Chief Executive Officer    Title    Date

## C. Fee Schedule Checks should be made payable to: State of Delaware

Application Fee:	\$375.00
Filing of Annual Report:	\$250.00

- D. Please return this application to:  
 Health Facilities Licensing & Certification  
 3 Mill Road, Suite 308  
 Wilmington, DE 19806

## DEPARTMENT OF HEALTH & SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
 Section 512 (31 Del.C. 512)

### TANF PROGRAM

The Delaware Health and Social Services / Division of Social Services / *A Better Chance* Program is proposing to implement a policy change to the Division of Social Services' Manual Sections 3000 and 11000. The change arises from the federal Balanced Budget Act of 1997, which exempted from employment and training sanctions a Temporary Assistance for Needy Families (TANF) client with a child under 6 years of age if an inability to obtain child care can be demonstrated.

## SUMMARY OF PROPOSED REVISIONS:

- Exempts from employment and training sanctions a Temporary Assistance for Needy Families (TANF) client with

a child under 6 years of age if an inability to obtain child care can be demonstrated.

- Establishes definitions governing the inability to obtain child care and procedures by which the applicable determinations can be made.

## COMMENT PERIOD

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by July 31, 1998.

## NATURE OF PROPOSED REVISIONS:

### 3011.2 Sanctions For Failing To Comply With Self-Sufficiency Requirements

Self-sufficiency requirements include those related to employment and training, work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

The fiscal sanction for failure, without good cause, to meet school attendance requirements for a child under 16 are the same as for other self-sufficiency requirements. This includes teen parents who are dependent children.

The penalty for noncompliance with any of the self-sufficiency requirements will be:

- a) for the first offense, a 1/3 reduction in ABC
- b) for the second offense, a 2/3 reduction in ABC
- c) for the third offense, a loss of all cash benefits.

The duration of the first and second sanctions will each be two months or until the person complies, whichever is shorter. If, after one month, the person has not complied, DSS will schedule an interview to explain again the participation requirements. If at the end of the two month period there is no demonstrated compliance, the sanction will increase to the next level.

The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:

- a) for a first offense, a 1/3 reduction in ABC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- b) for a second offense, a 2/3 reduction in ABC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.
- c) for a third offense, a permanent loss of all cash

benefits.

The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months or until the individual obtains a job of equal or higher pay.

<b>Contract Requirement</b>	<b>Amount/Duration of Sanction</b>	<b>Increase /2 months if not compliant</b>
Employment & Training	1/3 reduction for 2 mon. or until compliance whichever is shorter for first offense; 2/3 reduction for 2 months or until compliance whichever is shorter for 2nd offense	Yes
Caretaker cooperation to ensure School Attendance for children under 16 years	1/3 reduction for 2 mon. or until compliance whichever is shorter; 2/3 reduction for 2 mon. or until compliance whichever is shorter for 2nd offense	Yes
Keeping a job, unless good cause exists to quit the job	If meeting job search requirements, 1/3 reduction for 2 mon. or until person enters a job of equal or higher pay, whichever is shorter; 2/3 reduction for 2 mon. or until enters a job of equal or higher pay whichever is shorter for second offense	No
Keeping a job, unless good cause exists to quit the job	If not meeting job search requirements, full loss of benefits until compliance or either meeting job search requirements or person enters a job of equal or higher pay	N/A

Because the third sanction is for the duration of the demonstration, an additional supervisory review of case circumstances will be required before imposing the third sanction, in order to determine whether good cause for noncompliance exists. Impose the third sanction, after such a review, if good cause is found not to exist.

Noncompliance with more than one of the self-sufficiency requirements at a point in time will result in a one-third benefit reduction for each sanction.

For example, a person fails to attend the DOL orientation and, prior to a cure then fails to cooperate with officials to ensure school attendance by his/her 14 year old child. The resulting sanctions would result in a 2/3 (1/3 + 1/3) loss of case benefits.

Note : Under TANF regulations , Section 402(e)(2), DSS cannot impose sanctions when individuals refuse to participate in work or work-related activities if these individuals are single custodial parents with at least one child under age six , and these parents have

demonstrated an inability to obtain needed child care. This provision neither makes parents exempt from participation in work activities, nor makes them exempt from time limits. It only restricts DSS authority to sanction.

Parents must demonstrate the following:

- the unavailability of appropriate child care within a reasonable distance from their home or work ( reasonable distance is defined as care that located in proximity to either a parent’s place of employment or near the parent’s home, generally care that is within one hour’s drive);
- the unavailability unsuitability informal child care by a relative or under other arrangements (of informal care is defined as care that would not meet the physical or psychological needs of the child);
- the unavailability of appropriate and affordable formal child care arrangements (affordable care is defined as care that would provide access to a full range of care and types of providers; and appropriate care is care that meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the and children).

Parents who claim inability obtain child must a worker press claim. Parents will have 10 days, either from the date when they first attempted to find child care or ten days from the date DSS instructed them to participate in work activities, to contact the worker. The worker will note on form 633 the reasons or reasons the were to find care, complete form 634, and submit this information to appropriate child care personnel for review. Child care personnel will have 20 days to review and decide whether the parents have a legitimate claim. If DSS determines that the parents did not demonstrate their claim, workers are to impose the sanctions. DSS will not sanction parents who have demonstrated their claims.

11002.9 Definitions and Explanation of Terms

The following words and terms, when used in the context of these policies will, unless clearly indicated otherwise, have the following meanings.

A. TANF - Temporary Assistance for Needy Families, a program established by Title IV-A of the Social Security Act and authorized by Title 31 of the Delaware Code to provide benefits to needy children who are deprived of parental support and care. While on ABC, families are eligible for child care only as long as they are working or involved with First Step - ABC (Category 11 and 12).

B. At-Risk Families - Low-income, working families who need child care in order to work, and are otherwise at risk of becoming eligible for TANF. Under the Division’s

CCMIS, At-Risk Families are part of Category 31.

The codes are:

C. Authorization - Form 618d is the parent/caretaker's authority to receive subsidized child care services and is the provider's authority to provide subsidized child care services to eligible parent/caretakers. The authorization informs providers how much care a parent is authorized to receive, what DSS will pay the provider and what parent/caretakers must pay as part of their fee.

D. Caregiver/Provider - The person(s) whom DSS approves to provide child care services or the approved place where care is provided.

E. Caretaker - The adult responsible for the primary support and guardianship of the child. As used here, this adult is someone other than the child's parent who acts in place of the parent. If a caretaker is unrelated to the child and has not been awarded custody by Family Court or guardianship, the caretaker is referred to the Division of Family Services to make a determination to either approve the non-relative placement or remove the child.

F. CCDBG - Child Care and Development Block Grant. 45 CFR Parts 98 and 99 created by the Omnibus Budget Reconciliation Act of 1990 to provide federal funds without State match to:

1. provide child care to low income families,
2. enhance the quality and increase the supply of child care,
3. provide parents the ability to choose their provider, and
4. increase the availability of early childhood programs and before and after school services.

Under the Division's CCMIS, CCDBG is part of Category 31.

G. CFR - Code of Federal Regulations. These are the rules the Federal Government writes to implement federal legislation. Once written and approved, they have the force of law.

H. CCMIS - Child Care Management Information System, the name used to describe the Division's information system for child care.

I. Child - A person under the age of 13, or children 13 to 18 if they are physically or mentally incapable of caring for themselves or in need of protective services.

J. Child Care Category - The CCMIS code for the child care funding source. Case Managers choose category codes based on the parent/caretaker's technical eligibility for service.

- 11 - TANF;
- 12 - TANF working;
- 13 - Transitional Child Care;
- 21 - Food Stamps E&T;
- 31 - // SSBG, CCDBG, At-Risk, and State funds.

K. Child Care Certificate - A form issued to a parent/caretaker which allows a parent/caretaker to choose a child care provider who does not have a contract with DSS. A certificate is not an authorization for child care, but a parent who wishes to select a non-contracted provider of their choice cannot get care unless the provider completes one.

L. Child Care Fee - The amount the parent/caretaker must pay toward the cost of child care. The fee is based on the income of the parent(s), or the child if the child lives with a caretaker, family size and a percentage of the cost of care based on type.

M. Child Care Services - Those activities that assist eligible families in the arrangement of child care for their children.

N. Child Care Centers - A place where licensed or license-exempt child care is provided on a regular basis for periods of less than 24 hours a day to 12 or more children, who are unattended by a parent or guardian.

O. Child Care Type - Refers to the setting or place where child care is provided. The four types of care are:

1. Center based (under CCMIS Site #17 or 18),
2. Group Home (under CCMIS Site #16),
3. Family Home (under CCMIS Site #15), and
4. In-Home (under CCMIS Site #19).

P. DCIS - Delaware Client Information System, the automated client information system for the Department of Health and Social Services.

Q. Educational Program - A program of instruction to achieve:

1. a basic literacy level of 8.9;
2. instruction in English as a second language;
3. a GED, Adult Basic Education (ABE), or High School Diploma;
4. completion of approved special training or certificate courses; or
5. a post-secondary degree where the degree is part of an approved Employability Development Plan.

The above definition excludes the pursuit of a graduate degree or second four-year college degree.

R. Employment - Either part-time or full time work for which the parent/caretaker receives income. It also includes periods of up to one month when parent/caretakers lose one job and need to search for another, or when one job ends and another job has yet to start.

S. Family Size - The total number of persons whose needs and income are considered together. This will always include the parent(s) and all their dependent children.

T. Family Child Care Home - A place where licensed care is provided for one to six children who are not related to the caregiver.

U. ABC Child Care - The name of the child care program for ABC recipients who work or who are in First Step - ABC. Under the CCMIS, this is Category 11 and 12.

V. Food Stamp Employment and Training - The program by which certain unemployed mandatory and/or voluntary Food Stamp recipients participate in activities to gain skills or receive training to obtain regular, paid employment. Persons can receive child care if they need care to participate. This is referred to as First Step - Food Stamps. Under the Division's CCMIS, this is Category 21.

W. In-Home Care - Care provided for a child in the child's own home by either a relative or non-relative, where such care is exempt from licensing requirements. It also refers to situations where care is provided by a relative in the relative's own home. This care is also exempt from licensing requirements.

X. Income - Any type of money payment that is of gain or benefit to a family. Examples of income include, wages, social security pensions, public assistance payments, child support, etc.

Y. Income Eligible - A family is financially eligible to receive child care services based on the family's gross income. It also refers to child care programs under Category 31.

AA. Income Limit - The maximum amount of gross income a family can receive to remain financially eligible for child care services. Current income limit is 155 percent of the federal poverty level.

AB. Job Training - A program which either establishes or enhances a person's job skills. Such training either leads to employment or allows a person to maintain employment already obtained. Such training includes, but is not limited to: First Step contracted programs, JTPA sponsored training programs, recognized school vocational programs, and on-the-job training programs.

AC. Large Family Child Care Home - A place where licensed care is provided for more than six but less than twelve children.

AD. Legal Care - Care which is either licensed or exempt from licensing requirements.

AE. Parent - The child's natural mother, natural legal father, adoptive mother or father, or step-parent.

AF. Parental Choice - The right of parent/caretakers to choose from a broad range of child care providers, the type and location of child care.

AG. Protective Services - The supervision/placement of a child by the Division of Family Services in order to monitor and prevent situations of abuse or neglect.

AH. Physical or Mental Incapacity - A dysfunctional condition which disrupts the child's normal development patterns during which the child cannot function without special care and supervision. Such condition must be verified by either a doctor or other professional with the competence to do so.

AI. Reimbursement Rates - The maximum dollar amount the State will pay for child care services.

AJ. Relative - Grandparents, aunts, uncles, brothers, sisters, cousins, and any other relative as defined by ABC policy, as they are related to the child.

AK. Residing With - Living in the home of the parent or caretaker.

AL. SSBG - Social Services Block Grant. Under the CCMIS, this is Category 31 child care.

AM. Seamless Services - To the extent permitted by applicable laws, a family is able to retain the same provider regardless of the source of funding, and providers are able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

AN. Self-Arranged Care - Child care which either parents or caretakers arrange on their own between themselves and providers. In this instance, the parent/caretakers choose to use a child care certificate, but the provider does not accept the State reimbursement rate for child care services. DSS limits payment for self-arranged care to its regular provider rates. Parent/Caretakers, in addition to any parent fee they pay, must also pay the difference between DSS' reimbursement rates and the providers' charge.

AO. Self-Initiated - Clients who enter an education or training program on their own. The education or training program must be comparable to a First Step - ABC education or training component. Self-initiated clients must receive child care services if there is a child care need.

AP. Special Needs Child - A child under 18 years of age whose physical, emotional, or developmental needs require special care. Both the need and care must be verified by a doctor or other professional with the competence to do so.

AQ. Special Needs Parent/Caretaker - An adult, who because of a special need, is unable on his/her own to care for children. The need must be verified by a doctor or other professional with the competence to do so.

AR. Technical Eligibility - Parent/caretakers meet requirements, other than financial, to receive child care services based on need and category.

AS. Verification - Written or oral documentation, demonstrating either need for service or sources of income.

AT. Appropriate Care - care that meets the health and safety standards as defined by State licensing guidelines, and that meets the age-appropriate needs of the child and the child care needs of the parents.

AU. Reasonable Distance - care that is located in proximity to either a parent's place of employment or near the parent's home (generally, care that is within one hour's drive).

AV. Unsuitability of Informal Care - informal care that would not meet the physical or psychological needs of the child.

AW. Affordable Child Care Arrangements - care that would provide access to a full range of child care categories and types of providers and that would meet the needs of most children and their parents.

## 11003.2.1 ABC Sanctions

Recipients who fail without good cause to meet requirements for ABC are sanctioned. A sanction means that the recipient's needs are not considered in determining the family's need for assistance and the recipient loses her/his share of the TANF grant. When these recipients receive sanctions, they lose their ABC Child Care and, as long as the ABC case remains open, they cannot receive other categories of child care. In order to retain ABC Child Care, the recipient will have to cure the sanction, meaning they will have to cooperate with their ABC requirements, or they will have to

become exempt.

Note : Under TANF regulations , Section 402(e)(2), DSS cannot impose sanctions when individuals refuse to participate in work or work-related activities if these individuals are single custodial parents with at least one child under age six , and these parents have demonstrated an inability to obtain needed child care. This provision neither makes parents exempt from participation in work activities, nor makes them exempt from time limits. It only restricts DSS authority to sanction.

Parents must demonstrate the following:

- the unavailability of appropriate child care within a reasonable distance from their home or work (reasonable distance is defined as care that is located in proximity to either a parent's place of employment or near the parent's home, generally care that is within one hour's drive);
- the unavailability or unsuitability of informal child care by a relative or under other arrangements (unsuitability of informal care is defined as care that would not meet the physical or psychological needs of the child);
- the unavailability of appropriate and affordable formal childcare arrangements (affordable care is defined as care that would provide access to a full range of child care categories and types of providers; and appropriate care care meets the health and safety standards as defined by State licensing guidelines, as well as the needs of the parents and children).

Parents who claim an inability to obtain needed child care must contact a DSS worker to press their claim. Parents will have 10 days, either from the date when they first attempted to find child care or ten days from the date DSS instructed them to participate in work activities, to contact the worker. The worker will note on form 633 the reasons or reasons the parents were unable to find care, complete form 634, and submit this information to appropriate child care personnel for review. Child care personnel will have 20 days to review and decide whether the parents have a legitimate claim. If DSS determines that the parents did not demonstrate their claim, workers are to impose the sanctions. DSS will not sanction parents who have their claims.

**DEPARTMENT OF HEALTH &  
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. 512)

**A BETTER CHANCE PROGRAM**

The Delaware Health and Social Services / Division of Social Services / *A Better Chance* Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3008. The change arises from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January, 1995, as part of the original *A Better Chance* (ABC) waiver design.

SUMMARY OF PROPOSED REVISIONS:

Deny cash assistance to children born to a teenage parent after December 31, 1998, unless the parent is married or at least eighteen (18) year of age.

The Division will conduct a series of public hearings at which this proposal will be discussed. The schedule for these hearings is as follows:

August 4, 1998 - Del Tech Terry Campus (Dover)	
Lecture Hall	7 p.m. to 9 p.m.
August 6, 1998 - Del Tech Stanton Campus	
Conference Facility	7 p.m. to 9 p.m.
August 12, 1998 - Carvel State Office Building (Wilmington)	4 p.m. to 6 p.m.
August 13, 1998 - Del Tech Owens Campus (Georgetown)	4 p.m. to 6 p.m.

Any person unable to attend these hearings who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by August 15, 1998.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

PROPOSED REGULATIONS:

3008 Eligibility of Certain Minors

A. Babies Born to Teen Parents

This policy applies to both applicants and recipients not covered by family cap rules.

Babies born after December 31, 1998 to a teenage parent are not eligible for cash assistance (ABC and GA) unless the parent is:

- married; or
- at least eighteen (18) years of age;

Teen parents are not eligible unless they are:

- an eligible child under ABC rules;
- married; or
- at least eighteen (18) years of age.

An emancipated minor is considered an adult and therefore, the baby would be eligible for cash assistance. If both parents live in the home, both parents must be at least eighteen (18) years of age or married for the baby to be eligible.

Babies not receiving cash assistance are eligible for all other DSS services and programs including food stamps, grant-related Medicaid, and Welfare Reform child care. In lieu of cash assistance, the Division may provide non-cash assistance services.

Determining financial eligibility and grant amounts for an assistance unit which contains a child(ren) affected by this provision:

The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

Exception:

This restriction will not apply when:

- the child is conceived as a result of incest or sexual assault; or
- the child does not reside with his/her parents.

Three Generation Households:

In a three (3) generation household, the grandparent could receive benefits for him/herself and for the teen parent but not for the child of the teen parent. This means that there is

not grandparent deeming in these cases.

## B. Family Cap

### Required Individuals

No additional ABC cash benefits will be issued due to the birth of a child, if the birth occurs more than ten (10) calendar months after:

- the date of application for ABC; or
- for active cases, the date of the first redetermination after October 1, 1995.

While no additional ABC cash benefits will be issued for the child(ren), the child(ren) will be considered an ABC recipient for all other purposes, including Medicaid coverage, Welfare Reform child care, other supportive services and food stamp benefits.

NOTE: Children born prior to the periods identified above who return or enter the household are not included in this restriction.

### Exceptions

The family cap restrictions will not apply in the following cases:

- to an additional child conceived as a result of incest or sexual assault; or
- to a child who does not reside with his or her parent; or
- to a child that was conceived in a month the assistance unit (i.e., the entire family) was not receiving ABC. This does not apply in cases that close due to being sanctioned.

Determining financial eligibility and grant amounts for an assistance unit which contains child(ren) affected by the family cap provision.

- The child(ren) is/are included when determining the assistance unit's need for assistance. The child(ren)'s income and resources is/are included when determining the assistance unit's income and resources. The child(ren) is/are not included when determining the payment standard for the assistance unit.

## DEPARTMENT OF HEALTH & SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its DME, pharmacy, general policy, non-emergency medical transportation, and long term care provider manual(s).

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than August 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

REVISION:

### DME Provider Manual Reimbursement for Services

Standard, non-customized durable medical equipment, including wheelchairs, is included in the nursing home per diem rate for both children and adults who are residents of long term care facilities. Medicaid will review the medical necessity of customized DME for fee-for-service payment outside the per diem rate. Medicaid considers durable medical equipment to be customized if it is medically necessary that the device be designed so that only the individual recipient can use it. Medicaid does not consider a wheelchair or other durable medical equipment to be customized if the selection

of the equipment and all significant adaptations can be coded using Level II HCPCS procedure codes found in Appendix A.

Equipment rental is priced according to Medicare's fee schedule. If no Medicare fee is available the DMAP will reimburse equipment rental as follows:

Purchase price (as defined above) ÷ 10 = monthly rental.

Generally the monthly rental is paid over a maximum of 15 months.

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## Pharmacy Provider Manual

### GENERAL CRITERIA

In addition:

- The DMAP will only cover medications and pharmaceuticals dispensed directly to the client or the client's representative;
- Pharmacy providers must not dispense medications and pharmaceuticals to a client or the client's representative when the pharmacy provider is aware that the product will be administered in a hospital setting; and
- Any medications distributed by the pharmacy provider to a clinical setting must be billed by the facility administering the product.

### Prior Authorization Requirements

Effective July 1, 1991, the DMAP does not require prior authorization of covered pharmaceuticals. Medications may be prior authorized if one of the following issues is present:

- medical necessity is lacking or is not clearly evident;
- potential for diversion, misuse and abuse;
- high cost of care relative to similar therapies;
- experimental use opportunity; and
- drug classes where the potential for not keeping within the policy guidelines of the DMAP are identified.

The pharmacy provider will initiate the request for prior authorization. Requests will be evaluated within one business day by Medicaid's pharmacy consultant or medical director. If required, one 72 hour emergency supply can be dispensed until a decision is made.

The Drug Utilization Review Board will make decisions regarding the medications that will require prior authorization

and the criteria to be used. Prior authorization will be based on duration of therapy, quantity, or a combination of both depending on the medication requested.

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## General Policy

### Aliens

Effective for dates of service 7/1/97 and after, illegally residing, non-qualified aliens are eligible ONLY for coverage of emergency and labor/delivery services. These services must be rendered in an acute care hospital emergency room or in an acute care inpatient hospital. ~~In addition, emergency services must be rendered for diagnoses designated by the DMAP as an emergency (see Appendix G for a comprehensive list of the covered diagnoses).~~

### QI-1s and QI-2s

The Balanced Budget Act of 1997 added a new group of Medicare qualifying individuals who have incomes between 120% and 135% of the Federal Poverty Level (QI-1s) and another group who have income between 135% and 175% of the FPL (QI-2s).

Medicaid will pay Medicare Part B premiums for QI-1s and the small portion of the Part B premium for QI-2s that was transferred from Part A.

### II Managed Care Options

A. Diamond State Health Plan (Medicaid Managed Care) Effective 1/1/96

#### Coverage Under The MCO Benefits Package

- Inpatient and outpatient hospital - includes all pharmaceuticals and blood products;

Additional Services Are Covered Under The Medical Assistance Program

#### Wrap Around Services that are Covered for the Categorically Eligible Medicaid Recipient

- Pharmacy - only if dispensed by a pharmacy provider to a client or the client's representative for use in other than a hospital setting.

#### Wrap Around Services that are Covered for the Expanded Population

- Pharmacy - only if dispensed by a pharmacy provider to the client or client's representative for use in other than a hospital setting.

## Non-Emergency Transportation Provider Manual

Unloaded Mileage is the distance traveled by the motor vehicle carrying no passengers, enroute to the point of pickup or enroute from the point of drop-off. To the point of pickup of the passenger AND/OR from the point of drop-off of the passenger. The transportation provider can only charge mileage when the passenger for whom the claim is submitted is physically in the vehicle. Mileage cannot be charged enroute to the pickup point or enroute from the drop-off.

## Long Term Care Provider Manual

Durable Medical Equipment - standard, non-customized durable medical equipment, including wheelchairs, is included in the nursing home per diem rate for both children and adults who are residents of long term care facilities. Medicaid will review the medical necessity of customized DME for fee for service payment outside the per diem rate. Medicaid considers durable medical equipment to be customized if it is medically necessary that the device be designed so that only the individual recipient can use it. Medicaid does not consider a wheelchair or other durable medical equipment to be customized if the selection of the equipment and all significant adaptations can be coded using Level II HCPC procedure codes.

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Section 314 & 2503 (18 Del.C. 314, 2503)

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Monday, July 27<sup>th</sup>, 1998 at 10:00 a.m. in the 2<sup>nd</sup> Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

The purpose of the Hearing is to solicit comments from the insurance industry and the general public on proposed revisions to the standards for the Defensive Driving Course (Automobiles and Motorcycles).

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter

101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Monday, July 20, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302-739-4251, ext. 157 or 800-282-8611 no later than Monday, July 20, 1998.

## REGULATION NO. 37

### DEFENSIVE DRIVING COURSE DISCOUNT (AUTOMOBILES AND MOTORCYCLES)

Adopted: April 20, 1982; effective April 20, 1982  
Amendment #1: August 29, 1988  
Amendment #2: July 19, 1990  
Amendment #3: June 23, 1995

#### Table of Contents

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#### SECTION I PURPOSE

The purpose of this Regulation is to provide a discount applicable to total premiums for persons who voluntarily attend and complete a Defensive Driving Course and to provide criteria for Defensive Driving Courses, Sponsors and Instructors.

#### SECTION II AUTHORITY

This Regulation is adopted pursuant to 18 Del. C. Section 314, and 18 Del. C. Section 2503 and promulgated in accordance with the procedures specified in the Administrative Procedures Act, 29 Del. C. Chapter 101.

#### SECTION III MINIMUM REQUIREMENTS

A Defensive Driving Course Discount shall be applied to the total premiums for bodily injury liability coverage, property damage liability coverage, and personal injury protection coverage provided:

(1) The automobile or motorcycle is individually owned or jointly owned by husband and wife or by members of the same household and is classified and rated as a private passenger automobile or motorcycle; and

(2) The driver who customarily operates the automobile or motorcycle has a certificate certifying voluntary attendance and successful completion within the last 36 months from the date of application of a motor vehicle accident prevention course or motorcycle rider course, as appropriate, which is approved by the Insurance Commissioner.

#### SECTION IV APPLICATION

(a) A 10% discount shall be applied with respect to the applicable premium(s) for each automobiles or motorcycle insured under a policy if all operators named on the policy as insureds complete the course. If fewer than all the operators covered as principal or occasional drivers complete the course, then the discount shall be a fraction of 10%. The fraction shall be the number of operators completing the course, divided by the total number operators. The discount shall begin at the inception date of the policy or the first renewal date following application by the insured and shall terminate at the policy expiration date subsequent to the expiration of three years since completion of the course.

(b) An insured who has received a defensive driving discount as outlined in (a) (above) may take an refresher defensive driving course within the ninety days prior to the three year expiration date thereof or ~~anytime thereafter and within two years thereof~~ to receive a 15% discount for an additional three year period as outlined in (a) (above). Discounts shall not overlap. The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

#### SECTION V IMPLEMENTATION

Upon the effective date of the Act, the discount shall be first applied to policies written to be effective on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), or with renewal dates on or after July 14, 1982 (automobile), or July 19, 1990 (motorcycle), if applied for by the insured, and shall remain in effect for a 3-year period from the effective date of such policies.

The discount may be applied as a multiplier or on an additive basis compatible with the rating system in use by the company.

#### SECTION VI DEFENSIVE DRIVING COURSE CREDENTIAL COMMITTEE

~~(a) To receive the premium discount provided in Section IV, the person must complete a Defensive Driving course approved by the Commissioner. The Commissioner hereby forms an entity known as the Defensive Driving Course Credential Committee ("Committee"). The Committee is appointed to review, examine, and recommend approval or denial, and biannual continuation of approval of course sponsors, who wish to provide a Defensive Driving course for the purpose set out in Section I. In appointing Committee members, the Commissioner shall consider the following characteristics:~~

~~(1) The Committee shall be composed of 5 citizens of this State who are not employed by or have any financial interest in any course sponsor; knowledge of principles of teaching and learning;~~

~~(2) The Committee shall choose its Chairman and shall recommend to the Commissioner approval or denial of course sponsor applicants to provide a Defensive Driving Course and biannually review the continuation of approval; knowledge of safe driving principles;~~

~~(3) The Committee shall review and examine each application and each applicant to its satisfaction and shall further monitor successful applicants to ensure each course continues to meet the Committee's minimum requirements. The Committee may from time to time recommend amendments to course requirements; knowledge of Delaware Motor Vehicle laws; and~~

~~(4) To recommend approval of a course or applicant, the Committee shall require the course contains the following: any other relevant characteristics or experience.~~

~~(b) The Committee shall be composed of five citizens of this State who are not employed by or have any financial interest in any course sponsor and who meet the standards set forth in Section X(a)(1) through (4).~~

~~(c) Duties. The Committee shall:~~

~~(1) Choose its Chairman and shall make recommendations to the Commissioner concerning the duties set forth herein;~~

~~(2) Review and examine defensive driving course sponsors, instructors and prospective sponsors and instructors to its satisfaction.. Recommend certification, denial of certification or de-certification of a course sponsor or prospective sponsors and applicants.~~

~~(3) Review and examine defensive driving courses and shall further monitor courses to ensure each course continues to meet the Committee's minimum requirements, as outlined in this Regulation. The Committee may from time to time recommend amendments to course requirements.~~

~~(4) Certify approved course sponsors and individual instructors for a two year period so long as the course sponsor/instructor continues to meet the requirements of this~~

# PROPOSED REGULATIONS

Regulation; and

(5) Conduct any other such activity reasonably related to the furtherance of its duties.

## SECTION VII CERTIFICATION CRITERIA FOR DEFENSIVE DRIVING PROGRAMS AND SPONSORS

Each course sponsor shall:

(1) Submit for approval written course description for any defensive driving course to be offered that minimally includes the following elements:

a. The definition of defensive driving and the collision prevention formula serving as the basis for the course;

b. Vehicle safety devices, including the use of seat belts, child restraint devices and their proper use and relationship to a child's age and size, including the correct placement of a child in a vehicle. Vehicle air bag systems shall be explained in detail with special attention to proper passenger seating and proper use of anti-lock braking systems and how they compare to standard braking systems;

c. A discussion of driving situations as they relate to the condition of the driver, driver characteristics, use of alcohol and legal/illegal drugs, including a discussion of Delaware law on drinking and driving and the use of drugs;

d. A discussion of the five factors affecting driving, being: the condition of the driver, the vehicle, the road, weather and lighting as they pertain to driving defensively;

e. A discussion of specific driving situations, including stopping distances, proper following distances, proper intersection driving, stopping at railroad crossings, right-of-way and traffic devices as well as situations involving passing and being passed and how to protect against head-on collisions; and

f. Consideration of the hazards and techniques of city, highway, expressway and rural driving, including but not limited to proper use of exit and entrance ramps, driving in parking lots and a discussion of Delaware law concerning school buses.

(2) Require its instructors to present courses in a manner consistent with the approved curriculum and otherwise in accordance with the standards set forth herein.

(3) Require that each student receives a minimum of six hours of class time for the initial course and three hours of class time for the advanced (renewal) course. Each hour shall consist of not less than 50 minutes of instructional time devoted to the presentation of course curriculum.

(4) Require its instructors to be in the classroom with the students during any and all periods of instructional time.

(5) Require instructors to maintain an atmosphere appropriate for class-work.

(6) Supply students who complete a defensive driving course with a certification of completion that includes, at a minimum, the name of the student, the date of the class, the

name of the defensive driving course and the course sponsor's authorized signature.

(7) Require that each of its instructors request his or her students complete a standardized Course/Instructor Evaluation Form for not less than one-third of the courses provided by each instructor and retain completed evaluation forms until the expiration of the certification period during which they are completed. The Course/Instructor Evaluation Form shall be in the manner and form prescribed by the Committee.

(8) Notify the Division of Motor Vehicles of each student's successful completion of the course in the manner and form required by the Division.

## SECTION VIII DE-CERTIFICATION, SUSPENSION AND PROBATIONARY STATUS

(a) Course sponsors and instructors may be de-certified, placed on probation for not more than 90 calendar days, or have certification suspended indefinitely upon a finding of the Committee that the course presented does not meet the criteria set forth in this Regulation. Investigations relating to issues of compliance shall be directed by the Committee.

(b) Prior to de-certification, placement on probation or suspension of certification, the course sponsor/instructor shall be notified, in writing, by the Committee. The course sponsor/instructor shall be given a reasonable opportunity to submit evidence of compliance in his or her defense.

(c) A course sponsor/instructor who is placed on probationary status and does not show proof of compliance with the standards set forth herein within 90 calendar days shall be subject to de-certification at the end of the probationary period.

(d) Course sponsor/instructor may be de-certified, suspended or placed on probation for the following:

(1) Falsification of information on, or accompanying, the Application for Certification/Re-certification;

(2) Falsification of, or failure to keep and provide adequate student records and information as required herein;

(3) Falsification of, or failure to keep and provide adequate financial records and documents as required; and

(4) Failure to comply with any other standard set forth in this Regulation.

## SECTION IX APPEAL PROCEDURES

(a) Within 10 business days after the date of written notification of certification denial, suspension, probation or de-certification, the course sponsor/instructor may file an appeal requesting review of the action taken.

(b) The appeal shall be addressed to the Committee, citing the reasons for the request, and accompanied by any other relevant substantiating information.

(c) The Committee shall conduct all hearings pursuant to Title 29, Chapter 101 of the Delaware Code Annotated.

SECTION X CERTIFICATION PROCESS FOR DEFENSIVE DRIVING INSTRUCTORS

(a) Basic Requirements. Each instructor shall:

- (1) Be at least 18 years of age;
- (2) Be a high school graduate or have a G.E.D.;
- (3) Hold a valid driver's license with no more than

4 points, no suspensions or revocations in the past two years; and

(4) Have no felony convictions during the past four years and no criminal convictions evidencing moral turpitude. The Committee reserves the right to require a criminal history background check of all applicants for an instructor's certification.

(b) The Committee may recommend that Basic Requirements (a)(2) through (4) hereof be waived upon a finding that an instructor is qualified and fit to act as an instructor.

(c) Re-certification. Every two years each instructor shall:

(1) Submit evidence that he or she has taught the certified course a minimum of 12 hours the previous year;

(2) Submit evidence that he or she attended an in-service update training seminar, or other training session, as provided by, or specified by, a certified defensive driving course sponsor; and

(3) Submit a form as prescribed by the Committee certifying that he or she continues to meet the requirements of an instructor as outlined in this Regulation.

Effective date. This act shall become effective on January \_\_\_\_\_ of 1999.

~~a. All basic and refresher courses must meet or exceed the American Automobile Association Driving Improvement Program (AAA), the National Safety Council's Defensive Driving Course or the AARP's 55-ALIVE Course;~~

~~b. All basic courses must include at least 6 hours in classroom study and all refresher courses must include at least 3 hours of classroom study. In the alternative, the committee is authorized to approve a basic or refresher course which includes "hands-on" defensive driving training and at least 1 hour of classroom instruction;~~

~~e. All basic courses must adequately address the following subject areas:~~

- ~~1. The alcohol or drug impaired driver;~~
- ~~2. Preventable accidents and defensive driving techniques;~~
- ~~3. Occupant protection and child restraints and helmet use for motorcycles;~~
- ~~4. The fatigued or physically impaired driver;~~
- ~~5. Stopping and reaction time;~~
- ~~6. Night and bad weather driving; and~~
- ~~7. Proper vehicle maintenance as a safety measure;~~

~~d. All refresher courses must reinforce and build upon the content of a basic course.~~

~~e. All course instructors shall submit complete and detailed resumes with the course sponsor's application to the Committee to ensure their education, knowledge, ability and competence to teach the course.~~

~~(5) The Commissioner will follow the Committee's recommendation, if supported by substantial evidence and not an abuse of discretion, and approve or deny the application. If the Commissioner approves the course sponsor and each individual instructor, that approval shall continue for a period or two years as long as the approved program continues to meet the requirements of this section and requirements that are modified, added or amended from time to time.~~

~~(6) Approved Course providers shall notify the Division of Motor Vehicles of the successful completion of the Course by operators in the manner and form required by the Division.~~

DATE: June 23, 1995      Donna Lee H. Williams  
Insurance Commissioner

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 314 & 2533 (18 Del.C. 314, 2533)

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Monday, July 29<sup>th</sup>, 1998 at 10:00 a.m. in the 2<sup>nd</sup> Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

The purpose of the Hearing is to solicit comments from the insurance industry, the agent community and the general public on proposed revisions of the Delaware Workplace Safety Program to increase the number of businesses eligible to participate.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter

101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Monday, July 22, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302-739-4251, ext. 157 or 800-282-8611 no later than Monday, July 22, 1998.

**REGULATION NO. 65**  
**DELAWARE WORKPLACE SAFETY REGULATION**

Sec.

1. Authority
2. Purpose
3. Scope
4. Eligibility and premium credit
5. Notice of employer eligibility
6. Eligibility period
7. Inspections and cost
8. Renewals and eligibility
9. Premium size ranges and corresponding credits
10. Effect upon manual rates and schedule rating credits
11. Effective date

**SECTION 1. AUTHORITY.**

This regulation is adopted and promulgated by the Insurance Commissioner pursuant to Title 18 Del. C. Section 314, Section 2533 and promulgated under 29 Del. C. Chapter 101.

**SECTION 2. PURPOSE.**

The purpose of this regulation is to:

A. Enhance the health and safety of workers in the State of Delaware.

B. Provide lower insurance premiums for qualifying employers who currently pay between \$3,161 and \$60,000 of annual Delaware Workers' Compensation premiums.

C. Establish both testing and inspection procedures to determine an employer's qualification for a premium credit under the Workplace Safety Program.

**SECTION 3. SCOPE.**

All employers who comply with the criteria set forth in this regulation are eligible for participation in the Workplace Safety Program. Only Delaware work sites will be eligible for this program and safety credit applies to only Delaware

premiums in multi-state policies.

**SECTION 4. ELIGIBILITY AND PREMIUM CREDIT.**

An employer is eligible for the Safety Program if its annual premium is ~~between \$3,161 and \$60,000~~ or more. Workplace Safety credit eligibility is based on the most current unit statistical card filing. The Delaware Compensation Rating Bureau will test each employer by taking the most current unit statistical card payroll times current rates times current experience modification to determine the employer's premium size.

**SECTION 5. NOTICE OF EMPLOYER ELIGIBILITY.**

A. Employers meeting the premium requirement will be notified by the Delaware Department of Insurance seven months in advance of their policy renewal date. This notification will include a questionnaire to ascertain whether the employer may qualify for a safe workplace credit; ~~together with the schedule of inspection costs.~~

B. In a form acceptable by the Delaware Department of Insurance, the Delaware Compensation Rating Bureau will mail to each carrier's home office a list of its policyholders who have met the premium requirements and who have been notified by the Department.

**SECTION 6. ELIGIBILITY PERIOD.**

The Department will notify the employer of eligibility, and inform the employer that he must elect at least five (5) months in advance of the date of policy renewal to participate in the Safety Program. Failure to notify the Department within this time period of an intent to renew participation may preclude the employer's participation in the Program for the next year. Election to participate shall commence by contacting the Delaware Department of Insurance.

**SECTION 7. INSPECTIONS AND COST.**

A. All inspections shall be made by a representative from an independent safety expert company under contract to the Insurance Department. The Insurance Department will notify the inspector of the employer's request. The inspector, in turn, will then contact the employer to set up the first of two inspections. A second unannounced inspection shall be made no later than the expiration date of the policy to which any workplace safety credit based on the inspection will apply to confirm the initial certifications of safety in the workplace. The Department of Insurance will notify the Bureau when an employer successfully completes both the scheduled and nonscheduled inspection. Failure to pass the first scheduled inspection will result in a denial of an employer's eligibility to participate in the Workplace Safety Program. However,

the employer, after failing its first inspection can request another inspection, after successful completion of which will make them eligible for participation in the Workplace Safety Program.

B. The cost of each inspection will be borne by the employer. The minimum charge for safety inspection is \$150 per location. Each work location must successfully pass both inspections before an employer is entitled to a premium credit under the program. Inspection fees for large and/or complex employers may be established by the Department of Insurance.

**SECTION 8. RENEWALS AND ELIGIBILITY.**

An employer must apply for the Workplace Safety Program each year. For each year after the initial qualification, the inspection requirement will consist of one unannounced inspection. The Department will maintain a list of inspection charges which will be sent to interested parties upon request.

**SECTION 9. PREMIUM SIZE RANGES AND CORRESPONDING CREDITS.**

Qualifying employers will receive Workplace Safety credits of from 1% to 20% based on their premium size. Following are the premium-size ranges and corresponding credits to which an employer is eligible if his workplace passes

**PREMIUM RANGE SAFETY PLAN CREDIT**

\$ 3,161 — \$ 3,197	10%
\$ 3,198 — \$ 3,234	11%
\$ 3,235 — \$ 3,272	12%
\$ 3,273 — \$ 3,309	13%
\$ 3,310 — \$ 3,346	14%
\$ 3,347 — \$ 3,383	15%
\$ 3,384 — \$ 3,420	16%
\$ 3,421 — \$ 3,458	17%
\$ 3,459 — \$ 3,495	18%
\$ 3,496 — \$ 3,532	19%
\$ 3,533 — \$50,000	20%
\$50,001 — \$51,000	19%
\$51,001 — \$51,500	18%
\$51,501 — \$52,000	17%
\$52,001 — \$52,500	16%
\$52,501 — \$53,000	15%
\$53,001 — \$53,500	14%
\$53,501 — \$54,000	13%
\$54,001 — \$54,500	12%
\$54,501 — \$55,000	11%
\$55,001 — \$55,500	10%
\$55,501 — \$56,000	9%

\$56,001 — \$56,500	8%
\$56,501 — \$57,000	7%
\$57,001 — \$57,500	6%
\$57,501 — \$58,000	5%
\$58,001 — \$58,500	4%
\$58,501 — \$59,000	3%
\$59,001 — \$59,500	2%
\$59,501 — \$60,000	1%

Over \$60,000 0%

Safety credits will be granted according to the following formula:

$$20\% \times [1.0000 - C]$$

where “C” is the credibility of the qualified employer in the uniform Experience Rating Plan for the policy period expiring immediately prior to the application of the Safety credit. If the qualified employer was not experience-rated in the policy period expiring immediately prior to the application of the Safety credit, “C” will be set at 0.500. Safety credit packages will be rounded to the nearest whole percent.

**SECTION 10. EFFECT UPON MUTUAL RATES AND SCHEDULE RATING CREDITS.**

A. Workers’ Compensation manual rates shall not be adjusted because of implementation of this program.

B. Schedule rating plan credits given to policyholders for “competitive” reasons cannot be withdrawn. Schedule credits given for safety reasons may be reduced to offset the Workplace Safety Program premium credit.

C. A Ballast Delaware Workplace Safety Program Correction Factor may be introduced in the Experience Rating Program for all employers in the premium size ranges eligible for the Workplace Safety Program shall be included in loss costs and residual market rates. This Ballast F factor may offset credits given to qualified employers, so that the Workplace Safety Program will neither increase nor decrease premiums for eligible employers in the aggregate.

**SECTION 11. EFFECTIVE DATE.**

The regulation shall become effective 30 days after the Commissioner’s signature.

Date: ~~August 30, 1990~~ Donna Lee H. Williams  
Insurance Commissioner

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## DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

### DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

1. TITLE OF THE REGULATIONS:

REGULATION 1, SECTION 2 - DEFINITIONS  
REGULATION 24, SECTION 2 - DEFINITIONS

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to revise the definition of volatile organic compounds (VOCs) in Regulation 1, Section 2 and the definition of exempt compounds in Regulation 24, Section 2. These proposed revisions will add twenty-four (24) VOCs that have been determined by the Environmental Protection Agency (EPA) to have negligible photochemical reactivity to Delaware's definition. This action will make the State of Delaware's definition of exempt VOCs consistent with the federal definition of exempt VOCs published at 40 CFR Part 51.100(s)(1).

3. POSSIBLE TERMS OF THE AGENCY ACTION: None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT: 7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed revisions to Regulation 1, Section 2 and Regulation 24, Section 2 will be held on Thursday, July 30, 1998, beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. For information concerning the hearing, the public should call Ms. Joanna French at (302) 323-4542

7. PREPARED BY:

Joanna L. French, (302) 323-4542, June 9, 1998

### REGULATION NO. 1 DEFINITIONS AND ADMINISTRATIVE PRINCIPALS

Section 2 - Definitions

\*\*\*

VOLATILE ORGANIC COMPOUNDS: (Also denoted as VOCs) Any carbon-containing compound, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

methane;  
ethane;  
methyl chloroform (1,1,1-trichloroethane);  
CFC-113 (1,1,1-trichloro-2,2,2-trifluoromethane);  
methylene chloride (dichloromethane);  
CFC-11 (trichlorofluoromethane);  
CFC-12 (dichlorodifluoromethane);  
HCFC-22 (chlorodifluoromethane);  
HFC-23 (trifluoromethane);  
CFC-114 (1,2-dichloro-1,1,2,2-tetrafluoroethane);  
CFC-115 (chloropentafluoroethane);  
HCFC-123 (1,1,1-trifluoro-2,2-dichloroethane);  
HFC-134a (1,1,1,2-tetrafluoroethane);  
HCFC-141b (1,1-dichloro-1-fluoroethane);  
HCFC-142b (1-chloro-1,1-difluoroethane);  
HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);  
HFC-125 (pentafluoroethane);  
HFC-134 (1,1,2,2-tetrafluoroethane);  
HFC-143a (1,1,1-trifluoroethane);  
HFC-152a (1,1-difluoroethane); and  
parachlorobenzotrifluoride (PCBTF);  
cyclic, branched, or linear completely methylated  
siloxanes;  
acetone;  
perchloroethylene (tetrachloroethylene);  
HCFC-225ca (3,3-dichloro-1,1,1,2,2-  
pentafluoropropane);  
HCFC-225cb (1,3-dichloro-1,1,2,2,3-  
pentafluoropropane);  
HFC-43-10mee (1,1,1,2,3,4,4,5,5,5-decafluoropentane);  
HFC-32 (difluoromethane);  
HFC-161 (ethylfluoride);  
HFC-236fa (1,1,1,3,3,3-hexafluoropropane);  
HFC-245ca (1,1,2,2,3-pentafluoropropane);  
HFC-245ea (1,1,2,3,3-pentafluoropropane);  
HFC-245eb (1,1,1,2,3-pentafluoropropane);  
HFC-245fa (1,1,1,3,3-pentafluoropropane);  
HFC-236ea (1,1,1,2,3,3-hexafluoropropane);  
HFC-365mfc (1,1,1,3,3-pentafluorobutane);  
HCFC-31 (chlorofluoromethane);  
HCFC-151a (1-chloro-1-fluoroethane);  
HCFC-123a (1,2-dichloro-1,1,2-trifluoroethane);  
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane  
(C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);  
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-  
heptafluoropropane

$(\text{CF}_3)_2\text{CFCF}_2\text{OCH}_3$ ;  
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane  
 $(\text{C}_4\text{F}_9\text{OC}_2\text{H}_5)$ ;  
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-  
heptafluoropropane  $(\text{CF}_3)_2\text{CFCF}_2\text{OC}_2\text{H}_5$ ;  
 methyl acetate; and

perfluorocarbon compounds which fall into these classes:

- (1) Cyclic, branched, or linear, completely fluorinated alkanes.
- (2) Cyclic, branched, or linear completely fluorinated ethers with no unsaturated bonds.
- (3) Cyclic, branched, or linear, completely tertiary amines with no unsaturated bonds.
- (4) Sulfur containing perfluorocarbons with no unsaturated bonds and with sulfur bonds only to carbon and fluorine.

**REGULATION NO. 24**  
**CONTROL OF VOLATILE ORGANIC COMPOUND**  
**EMISSIONS**

\*\*\*

Section 2 - Definitions

\*\*\*

s. "Exempt compounds" means any of the compounds listed in Regulation 1, Section 2 - Definitions, "Volatile Organic Compounds" which have been determined to have negligible photochemical reactivity:.

methane;  
 ethane;  
 methyl chloroform (1,1,1-trichloroethane);  
 CFC-113 (1,1,1-trichloro-2,2,2-trifluoromethane);  
 methylene chloride (dichloromethane);  
 CFC-11 (trichlorofluoromethane);  
 CFC-12 (dichlorodifluoromethane);  
 HCFC-22 (chlorodifluoromethane);  
 HFC-23 (trifluoromethane);  
 CFC-114 (1,2-dichloro-1,1,2,2-tetrafluoroethane);  
 CFC-115 (chloropentafluoroethane);  
 HCFC-123 (1,1,1-trifluoro-2,2-dichloroethane);  
 HFC-134a (1,1,1,2-tetrafluoroethane);  
 HCFC-141b (1,1-dichloro-1,1-fluoroethane);  
 HCFC-142b (1-chloro-1,1-difluoroethane);  
 HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);  
 HFC-125 (pentafluoroethane);  
 HFC-134 (1,1,2,2-tetrafluoroethane);  
 HFC-143a (1,1,1-trifluoroethane);  
 HFC-152a (1,1-difluoroethane)

Perfluorocarbon compounds which fall into these classes:

- (1) Cyclic, branched, or linear, completely fluorinated alkanes;
- (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturated bonds;
- (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturated bonds; and
- (4) ~~Sulfur containing perfluoroarbons with no unsaturated bonds and with sulfur bonds only to carbon and fluorine.~~

For determining compliance with emission limits, VOCs will be measured according to the procedures in Methods 25 and 25A of Appendix A of 40 CFR, Part 60, and the procedures and equations in §60.755. Where such a method also measures compounds with negligible photochemical reactivity, and owner or operator may exclude these negligibly-reactive compounds when determining compliance with an emission standard. However, the Department may require such owner or operator, as a precondition to excluding these methods and monitoring results demonstration, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the sources' emissions.

In addition to the procedures for requesting a satisfactory compliance determination, where the Department proposes to allow the use of a test method for excluding negligibly-reactive compounds that is different or not specified in the approved SIP, such change shall be submitted to the U.S. EPA for approval as part of a SIP revision.

**DEPARTMENT OF NATURAL**  
**RESOURCES & ENVIRONMENTAL**  
**CONTROL**

**DIVISION OF AIR & WASTE MANAGEMENT**  
**AIR QUALITY MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code,  
 Chapter 60 (7 Del.C. Ch. 60)

1. TITLE OF THE REGULATIONS:

**REGULATION 20, SECTION 29 - NEW SOURCE PERFORMANCE STANDARDS FOR HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS**

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to adopt the New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators found at 40 CFR Part 60, Subpart Ec by reference. In addition, to satisfy the requirements of 40 CFR Part 60,

Subpart Ce, the Department has prepared a State Plan for existing sources and is proposing to expand the applicability of Subpart Ec so that it will apply to both new and existing hospital, medical, and/or infectious waste incinerators. The proposed State Plan includes the proposed adoption by reference regulatory language of 40 CFR Part 60, Subpart Ec.

Subpart Ec establishes emission limits for nine different pollutants including tetra- through octa-chlorinated dibenzo-para-dioxins and dibenzofurans, particulate matter, carbon monoxide, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. This subpart will also establish requirements for operator training and qualification, submittal of a waste management plan, siting requirements for new facilities, compliance and performance testing, monitoring, record keeping, and reporting.

3. POSSIBLE TERMS OF THE AGENCY ACTION: None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT: 7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed State Plan and proposed Regulation 20, Section 29 will be held on Thursday, July 30, 1998, beginning at 6:30 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. For information concerning the hearing the public should call Ms. Joanna French at (302) 323-4542

7. PREPARED BY:

Joanna L French, (302) 323-4542, June 9, 1998

Delaware Department of Natural Resources and  
Environmental Control

AIR QUALITY MANAGEMENT SECTION

PROPOSED PLAN FOR THE REGULATION OF AIR  
EMISSIONS FROM HOSPITAL/MEDICAL/  
INFECTIOUS WASTE INCINERATORS

June 9, 1998

DELAWARE PROPOSED PLAN TO REGULATE AIR  
EMISSIONS FROM HOSPITAL/MEDICAL/  
INFECTIOUS WASTE INCINERATORS

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### Appendix A: Technical Support Document

#### DELAWARE PROPOSED PLAN TO REGULATE AIR EMISSIONS FROM HOSPITAL/MEDICAL/ INFECTIOUS WASTE INCINERATORS

##### I. Introduction

On September 15, 1997, the Environmental Protection Agency (EPA) promulgated emission guidelines (EG) for the control of air pollutants from hospital, medical, and/or infectious waste incinerators (HMIWI). The EG are found in Subpart Ce of 40 CFR Part 60. Emissions from HMIWI result in the release of a variety of air pollutants, some of which are of particular public health concern. Emissions from HMIWI include organics (dioxins/furans), particulates (PM), metals (cadmium, mercury, and lead), acid gases including sulfur dioxide and hydrogen chloride (SO<sub>2</sub> and HCl), oxides of nitrogen (NO<sub>x</sub>), and carbon monoxide (CO). In accordance with section 129 of the Clean Air Act of 1990 (CAA) which provides guidelines for solid waste combustion, the emission standards for these pollutants were set as the emission limitation that can be achieved by using maximum available control technology (MACT). For incinerators that commenced construction after June 20, 1996 or commenced modification after March 16, 1998, MACT is defined as the control achieved in practice by the best controlled similar unit. For incinerators that were constructed on or before June 20, 1996, MACT is defined as the average emission limitation achieved by the best performing twelve percent of units in the category; the MACT floor. The use of one or more control devices will be required in most cases to comply with the

emission standards set out by the EPA in subpart Ce.

The State of Delaware has developed this plan for requiring control of air contaminants from affected facilities, as required by the emission guidelines, section 111(d) and 129 of the Clean Air Act, and 40 CFR Part 60 Subpart B, Adoption and Submittal of State Plans for Designated Facilities.

## II. Enforceable Mechanism and Legal Authority

On September 15, 1997, the EPA promulgated a new source performance standard (NSPS) for the control of air pollutants from new or modified HMIWI. The NSPS is found at 40 CFR Part 60 Subpart Ec. 7 Del. C, Chapter 60 (Environmental Control) gives the State of Delaware the legal authority to adopt, implement, and enforce regulations that control the emissions of air contaminants into the atmosphere. Delaware will adopt into the State of Delaware "Regulations Governing the Control of Air Pollution" a regulation that incorporates 40 CFR Part 60 Subpart Ec by reference. The applicability of Subpart Ec will be expanded such that it will apply to both existing and new HMIWI; satisfying the requirements of both 40 CFR Part 60 Subpart Ce and Ec. Once promulgated, the regulation will be submitted to the EPA for approval. Specifically:

1. Section 6010 "Rules and regulations; plans" of 7 Del. C, Chapter 60 gives the Secretary the authority to adopt regulations that control the emissions of air contaminants into the atmosphere.

2. Section 6005 "Enforcement; civil and administrative penalties; expenses" of 7 Del. C, Chapter 60 gives the Secretary the authority to enforce any rule, regulation, or permit condition.

3. Section 6010 of 7 Del. C, Chapter 60, Regulation 2 "Permits", Regulation 17 "Source Monitoring, Recordkeeping and Reporting", Regulation 30 "Title V State Operating Permit Program", and 40 CFR Part 60 Subpart Ec, as adopted, gives the Secretary the authority to obtain information necessary to determine compliance.

4. Section 6010 and section 6024 "Right of Entry" of 7 Del. C, Chapter 60, Regulation 2, Regulation 17, Regulation 30, and 40 CFR Part 60 Subpart Ec, as adopted, gives the Secretary the authority to require record keeping, make inspections, and conduct tests.

5. Section 6010 of 7 Del. C, Chapter 60, Regulation 2, Regulation 17, Regulation 30, and 40 CFR Part 60 Subpart Ec, as adopted, gives the Secretary the authority to require the use of monitors and require emission reports of HMIWI owners or operators.

6. Section 6014 "Public Access to Information" of 7 Del. C, Chapter 60, Regulation 2, and Regulation 30 gives the Secretary the authority to make emission data available to the public.

7. Section 6018 "Cease and Desist Order" of 7 Del.

C, Chapter 60 gives the Secretary the power to issue an order to any person violating any rule, regulation or order or permit condition or provision to cease and desist from such violation.

The entire text of 40 CFR Part 60 Subpart Ec, as adopted, may be found in the Technical Support Document at Appendix A. Other referenced documents are available from the Department upon request.

## III. Attorney General's Statement

A letter of certification from the attorney general is not necessary to demonstrate legal authority for the adoption of this State Plan and regulation. The Department is adopting a State Regulation that will include all of the applicable requirements stated in Subparts Ce and Ec of 40 CFR Part 60.

## IV. Adoption of 40 CFR Part 60 Subpart Ec by Reference

The State of Delaware is adopting 40 CFR Part 60 Subpart Ec by reference, such that it will apply to both new and existing HMIWI. The adoption of this regulation will be incorporated into the State of Delaware "Regulations Governing the Control of Air Pollution" in Regulation 20, Section 29. This regulation will read as follows:

### Section 29 - Standards of Performance for Hospital/ Medical/Infectious Waste Incinerators

The provisions of Subpart Ec - Standards of Performance for Hospital/Medical/Infectious Waste Incinerators, of Part 60, Title 40 of the Code of Federal Regulations, as set forth in Vol. 62, No. 178, pp. 48347-48391, of the Federal Register, dated September 15, 1997, are hereby adopted by reference with the following changes:

(a) Wherever the word "Administrator" appears it shall be replaced by the word "Department", with the exception of sections 60.50c(i) and 60.56c(i).

(b) 60.50c(a) shall be replaced with the following language: "Except as provided in paragraphs (b) through (h) of this section, the affected facility to which this subpart applies is each individual hospital/medical/infectious waste incinerator (HMIWI)."

(c) Delete 60.50c(h).

(d) 60.50c(k) shall be replaced with the following language: "The requirements of this subpart shall become effective as follows:"

(e) Add section 60.50c(k)(1) to read as follows: "September 11, 1998 for affected facilities which construction is commenced after June 20, 1996 or for which modification is commenced after March 16, 1998;"

(f) Add new section 60.50c(k)(2) to read as follows: "As expeditiously as practicable but no later than September 11, 1999 for facilities which construction is commenced on

# PROPOSED REGULATIONS

or before June 20, 1996 and for which modification was not commenced after March 16, 1998.”

(g) Add new section 60.50c(k)(2)(i) to read as follows: “Affected facilities as defined in 60.50c(k)(2) may petition the Department for an extension beyond this compliance date. Such a petition shall include the following information and shall be submitted to the Department on or before March 11, 1999.”

(h) Add new section 60.50c(k)(2)(i)(A) to read as follows: “Documentation of the analyses undertaken to support the need for an extension, including an explanation of why the extended date allows sufficient time to comply with this regulation while September 11, 1999 is not sufficient. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and”

(i) Add new section 60.50c(k)(2)(i)(B) to read as follows: “Documentation of measurable and enforceable incremental steps of progress to be taken towards compliance with this subpart.”

(j) Add new section 60.50c(k)(2)(ii) to read as follows: “The Department shall review the information submitted from the affected facility pursuant to sections (k)(2)(i)(A) and (B) and either approve or deny the extension after determining if the extension is necessary to meet the requirements of this subpart.”

(k) Add new section 60.50c(k)(2)(iii) to read as follows: “The Department may grant an extension of up to September 11, 2001 for the affected facility to meet the requirements of this subpart.”

(l) 60.50c(l) shall be replaced with the following language: “Beginning September 15, 2000, affected facilities subject to this subpart shall be subject to Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution.” For affected facilities that commence operation on or before September 15, 1999, the owner or operator shall submit a complete Regulation 30 permit application to the Department no later than September 15, 2000. For affected facilities that commence operation after September 15, 1999, the owner or operator shall submit a complete Regulation 30 permit application to the Department within twelve (12) months of the commencement of operation of the affected facility.”

(m) In 60.51c in the definition of medical/infectious waste, (3)(iv) shall be replaced with the following language: “Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this definition.”

(n) 60.52c(a) shall be replaced with the following

language: “On and after the date on which the initial performance test is completed or is required to be completed under §60.8, whichever date comes first, no owner or operator of an affected facility shall cause to be discharged into the atmosphere from that affected facility any gases that contain stack emissions in excess of the limits presented in Table 1 or Table 2, as applicable.”

(o) Replace the title of Table 1 in 60.52c(a) to read as follows: “TABLE 1. EMISSION LIMITS FOR SMALL, MEDIUM AND LARGE HMIWI FOR WHICH CONSTRUCTION IS COMMENCED AFTER JUNE 20, 1996 OR FOR WHICH MODIFICATION IS COMMENCED AFTER MARCH 16, 1998.”

(p) Add new table to 60.52c(a) to read as follows:

TABLE 2. EMISSION LIMITS FOR SMALL, MEDIUM AND LARGE HMIWI FOR WHICH CONSTRUCTION COMMENCED ON OR BEFORE JUNE 20, 1996 AND FOR WHICH MODIFICATION HAS NOT COMMENCED AFTER MARCH 16, 1998

Pollutant	Units (7 percent oxygen, dry basis)	Emission Limits		
		HMIWI Size		
		Small	Medium	Large
Particulate Matter	milligrams per dry standard cubic meter (grains per dry standard cubic foot)	115 (0.05)	69 (0.03)	34 (0.015)
Carbon monoxide	parts per million by volume	40	40	40
Dioxins/ furans	nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or	125 (55)	125 (55)	125 (55)
	nanograms per dry standard cubic meter total dioxins/furans TEQ (grains per dry standard cubic feet)	or 2.3 (1.0)	or 2.3 (1.0)	or 2.3 (1.0)
Hydrogen chloride	parts per million by volume or percent reduction	100 or 93%	100 or 93%	100 or 93%
Sulfur dioxide	parts per million by volume	55	55	55
Sulfur dioxide	parts per million by volume	55	55	55
Nitrogen oxides	parts per million by volume	250	250	250
Lead	milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	1.2 (0.52) or 70%	1.2 (0.52) or 70%	1.2 (0.52) or 70%
Cadmium	milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.16 (0.07) or 65%	0.16 (0.07) or 65%	0.16 (0.07) or 65%
Mercury	milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction	0.55 (0.24) or 85%	0.55 (0.24) or 85%	0.55 (0.24) or 85%

(q) 60.52c(c) shall be replaced with the following language: "On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility utilizing a large HMIWI for which construction is commenced after June 20, 1996 or for which modification is commenced after March 16, 1998 shall cause to be discharged into the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22, except as provided in paragraphs (d) and (e) of this section."

(r) In 60.56c(b)(9)(ii) "Table 2" shall be replaced with "Table 3".

(s) Replace the title of the table in 60.56c(b)(9)(ii) to read as follows: "TABLE 3. TOXIC EQUIVALENCY FACTORS".

(t) 60.56c(c)(3) shall be replaced with the following language: "For large HMIWI for which construction is commenced after June 20, 1996 or for which modification is commenced after March 16, 1998, determine compliance with the visible emission limits for fugitive emissions from flyash/bottom ash storage and handling by conducting a performance test using EPA Reference Method 22 on an annual basis (no more than 12 months following the previous performance test)."

(u) In 60.56c(d)(1) "Table 3" shall be replaced with "Table 4".

(v) Replace the title of the table in 60.56c(d)(1) to read as follows: "TABLE 4. OPERATING PARAMETERS TO BE MONITORED AND MINIMUM MEASUREMENT AND RECORDING FREQUENCIES".

(w) In 60.56c(d)(2) "Table 3" shall be replaced with "Table 4".

(x) 60.56c(i) shall be replaced with the following language: "The owner or operator of an affected facility using an air pollution control device other than a dry scrubber followed by a fabric filter, a wet scrubber, or a dry scrubber followed by a fabric filter and a wet scrubber to comply with the emission limits under § 60.52c shall petition the Administrator (with a copy to the Department) for other site-specific operating parameters to be established during the initial performance test and continuously monitored thereafter. The owner or operator shall not conduct the initial performance test until after the petition has been approved by the Administrator.

(y) In 60.57c(a) both occurrences of "Table 3" shall be replaced with "Table 4".

(z) 60.58c(b)(2)(ii) shall be replaced with the following language: "For affected facilities for which construction is commenced after June 20, 1996, or for which modification is commenced after March 16, 1998, results of fugitive emissions (by EPA Reference Method 22) tests, if

applicable;"

(aa) 60.58c(d) shall be replaced with the following language: "An annual report shall be submitted 1 year following the submission of the information in paragraph (c) of this section and subsequent reports shall be submitted no more than 12 months following the previous report (once the unit is subject to permitting requirements under Regulation 30, the owner or operator of an affected facility must submit these reports semiannually). The annual report shall include the information specified in paragraphs (d)(1) through (d)(8) of this section. All reports shall be signed by the facilities manager."

The complete text of 40 CFR Part 60 Subpart Ec, as adopted, is provided in the Technical Support Document at Appendix A.

#### V. Source and Emission Inventories

Delaware has one known HMIWI that is subject to the requirements of this plan; the E.I. duPont deNemours and Company, Inc., Experimental Station. This facility is currently only incinerating pathological waste and will only be subject to the notification and recordkeeping requirements of 60.50c(b) of Subpart Ec, as adopted (Appendix A). If the owner or operator of this facility decides in the future to incinerate infectious waste, the affected facility will be subject to the emission limits of Table 2 in section 60.52c(a) of Subpart Ec, as adopted (Appendix A).

Two other facilities have ceased operation of their incinerators since the promulgation of the Emission Guidelines of Subpart Ce of 40 CFR Part 60 on September 15, 1997. The incinerator located at Nanticoke Memorial Hospital ceased operation on March 31, 1998 and has been dismantled. The incinerator located at Kent General Hospital ceased operation on December 12, 1997. If the owner or operator decides to reopen this facility, he/she will be subject to Regulation 20, Section 29 "New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators" of the Delaware "Regulations Governing the Control of Air Pollution" once promulgated. The owner or operator of the facility will also be required to obtain an operating permit in accordance with Regulation 2 and/or Regulation 30 of Delaware "Regulations Governing the Control of Air Pollution" before the facility will be allowed to operate.

If another source is discovered subsequent to the submittal and approval of this State Plan and regulation, that facility will also be subject to the emission limitations and requirements stated within this State Plan and Regulation. The addition of another affected source will not require the reopening of this State Plan or Regulation.

The E.I. duPont deNemours and Company, Inc. Experimental Station incinerator is listed in the table below with the two hospital/infectious waste incinerators that have ceased operation. An emission inventory is not provided for the DuPont Experimental Station incinerator since this facility is only incinerating pathological waste and at this time does not plan to incinerate any medical/infectious waste. This table includes the maximum waste capacity and size designation of each incinerator. Any changes in this information will be updated annually via the Aerometric Information Retrieval System (AIRS).

The NEDS identification number for the E.I. duPont deNemours and Company, Inc. Experimental Station incinerator is 10 003 0011. This facility uses a pollution control system that consists of a gas quench, venturi scrubber, a counter-current packed scrubber, and a mist eliminator.

HMIWI FACILITIES SUBJECT TO THE EMISSION GUIDELINES			
Facility Name	County	Maximum Waste Capacity (lbs/hour)	Size Designation
E.I. duPont deNemours and Company, Inc. Experimental Station	New Castle	200	Small
Kent General Hospital*	Kent	470	Medium
Nanticoke Memorial Hospital*	Sussex	300	Medium

\* The incinerators at these facilities have ceased operation.

## VI. Emission Limits

The emission limits for HMIWI are those stated in section 60.33e in Table 1 of subpart Ce of 40 CFR Part 60. This table has been incorporated into Subpart Ec, as adopted by reference (see Appendix A). These standards include emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury.

These emission limits apply to any HMIWI that commenced construction on or before June 20, 1996 and did not commence modification after March 16, 1998.

## VII. Testing and Monitoring

Existing facilities will be subject to the compliance and performance testing requirements of 60.56c of subpart Ec, excluding the fugitive emission testing requirements of 60.56c(b)(12) and 60.56c(c)(3). Facilities using a control device will be required to establish applicable operating

parameters for the control device during the initial performance test as defined in Table 4 of 60.56c(d)(1) (as adopted, see Appendix A) and will be required to monitor these parameters continuously to determine compliance with the emission limits.

## VIII. Operator Training and Qualification

All owners and operators will be required to have a fully trained and qualified operator available at the facility during operation of the HMIWI or readily available to the facility within one hour. This operator must complete the requirements contained in 60.53c(c) through (g) of Subpart Ec.

## IX. Waste Management Plan

The owner or operator of the HMIWI will be required to prepare and submit a waste management plan that meets the requirements of 60.55c of subpart Ec. This plan must be submitted to the Department in accordance with 60.58c(c).

## X. Recordkeeping and Reporting

The owner or operator of an HMIWI will be required to meet the recordkeeping and reporting requirements of 60.58c with the exclusion of 60.58c(a), 60.58c(b)(2)(ii) and 60.58c(b)(7).

## XI. Title V Permit Application

All affected facilities will be required to have a Title V operating permit in accordance to Regulation 30 of the Delaware "Regulations Governing the Control of Air Pollution". A complete Regulation 30 Permit Application will be required to be submitted to the Department by September 15, 2000 in accordance with 60.50c(1) (see Appendix A).

## XII. Final Compliance

Final compliance with the requirements of this regulation will be required to be completed by all affected facilities as expeditiously as practicable but no later than September 11, 1999. In circumstances where this compliance date may not be met (i.e., for the installation of a control device), the owner or operator of the facility may petition the Department for an extension as provided in 60.50c(k)(2) (see Appendix A). The owner or operator of the facility must submit the petition to the Department on or before March 11, 1999. Upon approval of the extension, the Department will determine increments of progress for the facility with a final compliance date not to exceed September 11, 2001.

**XIII. Compliance Schedules**

Since the Department is requiring final compliance with the requirements of this regulation as expeditiously as practicable but no later than September 11, 1999, a Compliance Schedule is not required. However, since facilities have the option of submitting a petition for an extension of the final compliance date, the table below gives a probable compliance schedule for existing HMIWI who have petitioned and received an extension from the Department until September 11, 2001.

Compliance Schedule for Existing HMIWI Incinerators	
Submit a final control plan	by March 11, 1999
Awarding of Contracts for control systems or process modifications, or orders for purchase of equipment	by September 11, 1999
Initiate construction or installation of the APCD, or initiate process changes	by September 11, 1999
Complete construction or installation of APCD, or complete process changes	by March 11, 2001
Final Compliance	by September 11, 2001

**XIV. Public Participation**

[reserved]

This section will describe the public participation process including the public workshop and the public hearing.

**XV. Source Surveillance, Compliance Assurance, and Enforcement**

The affected facilities will be subject to the emission limits, operator training, waste management plan, compliance and performance testing, monitoring, and recordkeeping and reporting requirements specified in 40 CFR Part 60 Subpart Ec, as adopted.

The Department will submit annual reports to the EPA which detail the progress in the enforcement of the State Plan. The first progress report will be submitted to the EPA one year following the approval of the State Plan. The annual report will contain the following information:

1. Enforcement actions initiated against a designated facility during the reporting period,
2. Identification of any increments of progress required by the State plan during the reporting period,
3. Identification of designated facilities that have ceased operation during the reporting period,
4. Submission of additional emission data to update previous progress reports, and
5. Source and emission inventories for facilities that

were not identified during plan development or were not in operation at the time of plan development but began operation during the reporting period.

Technical reports on all performance testing conducted on the designated facilities, complete with concurrently recorded control device operating data will be retained by the Department and a copy will be sent to the Environmental Protection Agency, Region III.

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**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code,  
Section 209(a) (26 Del.C. 209(a))

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE REGULATION ESTABLISHING THE MINIMUM FILING REQUIREMENTS FOR ALL REGULATED COMPANIES SUBJECT TO THE JURISDICTION OF THE PUBLIC SERVICE COMM.	PSC REGULATION DOCKET NO. 4
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**ORDER NO. 4805**

AND NOW, this 26th day of May, 1998;

WHEREAS, the Public Service Commission (“Commission”) has previously adopted “Minimum Filing Requirements for All Regulated Companies” (“Minimum Filing Requirements”) to ensure uniform content in many of the submissions made to the Commission, including applications for rate adjustments; and

WHEREAS, the Commission’s Staff seeks changes and additions to the Minimum Filing Requirements for the stated purpose of increasing the procedural and practical efficiency of its oversight of the ratemaking process, and to lessen the administrative burdens of the same; and

WHEREAS, by memorandum dated May 22, 1998, Staff has submitted its Proposed Changes to Parts A and B of the Minimum Filing Requirements setting forth five (5) proposed changes to the Minimum Filing Requirements; and

WHEREAS, the Commission believes that, in light of Staff’s proposals, the provisions of the Minimum Filing Requirements to which those proposals are directed should

# PROPOSED REGULATIONS

be reexamined and, if appropriate, amended; and

WHEREAS, under 26 Del. C. § 209(a), the Commission may [f ix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed thereafter by any public utility. . . ;” and

WHEREAS, the Commission desires to give public notice, pursuant to 29 Del. C. §§ 1133, 10115, and 10118(a), of its intention to re-examine the subject Parts of the Minimum Filing Requirements, and to solicit comment concerning the efficacy, reasonableness, and propriety of Staff’s proposals;

NOW, THEREFORE, IT IS ORDERED:

1. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice attached hereto as Exhibit “A.” Such notice shall be accompanied by a copy of the proposed and existing Minimum Filing Requirements.

2. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit “All to be published in *The News Journal* and *Delaware State News* newspapers on or before July 1, 1998, omitting, however, the notice’s reference to documentary exhibits, and omitting such documentary exhibits themselves.

3. That the Secretary shall cause the notice attached hereto as Exhibit “A” (as modified pursuant to paragraph 2 above) to be sent by U.S. mail to all public utilities who currently file rate applications under Parts A and B of the Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Commission and all persons who have made timely written requests for advance notice of the Commission’s regulationmaking proceedings.

4. That G. Arthur Padmore is designated as the Hearing Examiner for this matter pursuant to 26 Del. C. §502 and 29 Del. C. 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning Staff’s proposed amendments on the basis of the materials, evidence, and testimony submitted. Hearing Examiner Padmore is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearings as may be required to develop further materials and evidence concerning any later-submitted proposed amendments. John S. Spadaro, Esquire, is designated as Staff Counsel for this matter.

5. That the public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 21 Del. C. § 114.

6. That the Commission reserves the jurisdiction and

authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

ATTEST:

Karen J. Nickerson  
Acting Secretary

E X H I B I T “A”

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE		
REGULATION ESTABLISHING		PSC REGULATION
THE MINIMUM FILING		DOCKET NO. 4
REQUIREMENTS FOR ALL		
REGULATED COMPANIES		
SUBJECT TO THE		
JURISDICTION OF THE		
PUBLIC SERVICE COMM.		

NOTICE OF COMMENT PERIOD AND PUBLIC  
HEARING ON PROPOSED CHANGES AND  
AMENDMENTS TO MINIMUM FILING  
REQUIREMENTS

In 1981, the Delaware Public Service Commission (the “Commission” or “PSC”) adopted “Minimum Filing Requirements for All Regulated Companies” to govern applications to the Commission by regulated public utilities, Parts A and B of the Minimum Filing Requirements describe the filing and content of rate increase applications made by large and small utilities subject to the Commission’s jurisdiction. These portions of the Minimum Filing Requirements are reproduced in their present form as Exhibit 1.

Rate increase applications submitted to the Commission are reviewed and evaluated by the Commission’s Staff for the justness and reasonableness of the rates proposed. The Commission is informed by Staff that, in recent years, the frequency and number of such applications has increased significantly, resulting in a corresponding increase in the administrative burdens associated with Staff’s review. Staff has also identified certain practices that tend to add significantly and unreasonably to these administrative burdens. According to Staff, these practices typically involve changes made by the utility to data on which the application relies, including changes to the test year (as that term is used in the Minimum Filing Requirements) and changes in rate base items, expenses, or revenues. Staff contends that the burden occasioned by such practices is most severe where

multiple and material changes are made at different points in time during the pendency of a single application. Staff further contends that, where such changes are sought, they are often of a type that is avoidable through the applicant's exercise of ordinary diligence in preparing its rate increase application.

Staff now seeks certain changes and additions to Parts A and B to the Minimum Filing Requirements that are designed to curtail the undesirable practices. In this way, the efficiency of the rate review process will be increased, and its administrative burdens reduced.

The text of the proposed Minimum Filing Requirements, as modified by Staff's changes and additions, is attached as Exhibit 2. These proposed changes and additions may be described as follows:

1. Part "A", Section I(B) (1) of the Minimum Filing Requirements provides a definition of the "test year," and specifies the time period to be reflected by the test year. The last two sentences of this section now read: "In addition, the twelve-month period must end no more than seven (7) months prior to the filing of the application for increased rates. For example, if the actual results of the operations for the 12-months ending March 31, 19xx, are used for the purpose of the test year, the application must be filed no later than October 31, 19xx." Staff proposes that these two sentences be changed to read:

In addition, the twelve-month period must end no later than seven (7) months prior to the the application, but no sooner than one month after the final closing of the company's books for that accounting period. For example, if the actual results of operations for the twelve months ending March 31, 19xx, are used for purposes of the test year, the application must be filed no sooner than April 30, 19xx, but no later than October 31, 19xx.

2. Part "A", Section I(C) of the Minimum Filing Requirements governs the filing of direct testimony and supporting exhibits, as well as the modification of test period data. The last sentence of this section now reads: "Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility up until the time the utility fields its rebuttal testimony." Staff proposes that this sentence be changed to read:

Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility at any time prior to its introduction of rebuttal evidence, but only to the extent they affect rate base items that were placed in

issue by the original application.

Staff also recommends that a new sentence be added to the end of this section as follows:

Any modification arising from issues not joined by the original application shall constitute a new application and be subject to all applicable filing, test year, test period, and other requirements hereunder.

3. Part "A" Section 1(E) of the Minimum Filing Requirements addresses Staff's review of rate increase applications for compliance with the Minimum Filing Requirements, and the penalties for noncompliance. Staff recommends that the following language be added to the end of this section:

In addition, if such defects materially impair the application, the Commission may reject the application in its entirety and require the filing of a new application. Grounds for such rejection may include, without limitation:

- a. Changes to the Test Year Data f iled as representing Financial Book Data (Final Close).
- b. Changes to Non Financial Test Year Data (such as customer counts, degree-day data, etc.) that materially impair the application (i.e. , to an extent greater than one percent of the revenue requirement).

4. Part "B", Section I(B)(1) of the Minimum Filing Requirements provides a definition of the "test year," and specifies the time period to be reflected by the test year. The second sentence of that section now reads: "The test year must include the actual 'Per Books' results of operation for a twelvemonth period ending no more than four months prior to the filing of the application for increased rates." Staff recommends that this sentence be changed to read:

The test year must include the actual 'Per Books' results of operation for a twelve-month period ending no sooner than one month after the final closing of the company's books for that accounting period, but no later than four months prior to the filing of the application for increased rates.

5. Part "B", Section I(B) of the Minimum Filing Requirements addresses Staff's review of applications for compliance with the Minimum Filing Requirements, and the penalties for noncompliance. Staff recommends identical changes to the ones it proposes for the corresponding section within Part "All of the Minimum Filing Requirements,

The Commission has authority to issue such rules, and to effect the proposed changes and additions, under 26 Del. 209(a).

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning Staff's proposed changes and additions to the Minimum Filing Requirements. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. **All such materials shall be filed on or before August 1, 1998.**

In addition, the Commission's duly appointed Hearing Examiner will conduct a public hearing concerning Staff's proposed changes and additions on Wednesday, August 5, 1998 at 10:00 AM in the Commission's hearing room at the above address.

The Minimum Filing Requirements, Staff's proposed changes and additions to the same, and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically (including use of the Telecommunications Relay Service), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. Persons with questions concerning this application may contact the Commission by either Text Telephone ("TT") at (302) 739-4333 or by regular telephone at (302) 739-4247.

STATE OF DELAWARE  
PUBLIC SERVICE COMMISSION

MINIMUM FILING REQUIREMENTS - PART A

RATE INCREASE APPLICATION - MAJOR UTILITIES

I. Instructions

A. Prefiling Announcement

In order for the Commission to schedule its future workload in an efficient manner, every public utility shall file with the Commission a Notice of Intent to file a general rate increase application not less than two (2) months prior to filing its application or notice of increase. This notice must include, in addition to the statement of intent to file, the dates of proposed test year and test period. If a regulated company cancels, changes or delays a proposed general rate increase application previously reported to the Commission, an amended report must be filed promptly reflecting such change of plans.

B. Test Year and Test Periods

1. Test Year Defined. The test year is the actual historical period of time for which financial and operating data will be required. The test year data must include the

actual "Per Books" results of operation for a 12-month period at the end of a reporting quarter. In addition, the twelve month period must end no later than seven months prior to the filing of the application but no sooner than one month after the final closing of the company's books for that accounting period for increased rates. For example, if the actual results of operations for the twelve months ending March 31, 19xx, are used for the purposes of the test year, the application must be filed no sooner than April 30, 19xx, but no later than October 31, 19xx.

2. Test Period Defined.

a. The test period consists of twelve consecutive months ending at the end of a reporting quarter utilized by the utility to support its request for relief. The test period may be the same as the test year or may include some of the months included in the test year and some months projected, such as six months "actual" and six months "projected", but may not include more than nine months "projected".

Updating Projected Test Periods.

b. If the filed test period is other than the test year (historic period), three additional months of projected total company data as filed shall be updated to actual total company data and provided to Staff and all parties within sixty days after the close of the quarter, unless a later date for submitting this additional data is otherwise ordered by the Hearing Examiner.

C. Testimony and Exhibits.

Prepared direct testimony and supporting exhibits must be filed coincident with the filing of the applications for rate relief. This filing requirement shall not prohibit the utility from subsequently submitting further testimony and exhibits in a timely fashion as necessary or proper to address issues raised during investigation of the filing; nor shall it (or B.2., above) prohibit the utility from proffering an exhibit or exhibits in the form of a fully projected test period, provided (1) such period shall consist of twelve consecutive months ending not later than the end of the first year during which the proposed rates are to become effective; (2) it is supported by relevant testimony establishing a verifiable link between the test period defined in section B.2. and the projected test period; and (3) it is in format consistent with such test period.

Modifications in test period data occasioned by reasonably known and measurable changes in current or future rate base items, expenses (i.e., labor costs, tax expenses, insurance, etc.) or revenues may be offered in evidence by the utility up until the time the utility files its rebuttal testimony at any time prior to its introduction of rebuttal evidence, but only to the extent they affect rate base items that were placed in issue by the original application.

Any modification arising from issues not joined by the original application shall constitute a new application, and be subject to all applicable filing, test year, test period and other

requirements hereunder.

D. Due Date

The information required in subsequent sections of Part A is to be filed with the Commission at the time of the utility's application for an increase in rates.

E. Penalty for Non-Compliance

The Commission Staff will review all filings applications for compliance with the format and instructions furnished herein and notify the utility within 30 days after the date of filing application of any deficiencies defects in compliance. The utility after such notification by the Commission Staff will then have 30 days to correct these deficiencies defects. If such deficiencies defects are not corrected, the Commission may reject a utility's rate filing application for non-compliance with the Minimum Filing Requirements.

In addition, if such defects materially impair the application, the Commission may reject the application in its entirety, and require the filing of a new application. Grounds for such rejection may include, without limitation:

a.) Changes to the Test Year Data Filed as representing Financial Book Data (Final Close).

b.) Changes to Non Financial Test Year Data (such as customer counts, degree-day data, etc.) that materially impair the application, i.e., more than one percent of the revenue requirement.

F. General Guidelines

1. Schedules shown are for illustrative purposes and may be modified to fit the individual company as long as the data intent is complied with. The burden of proof remains by Statute on the utility; therefore, if applicant utility believes that additional information is necessary to support its case or is proposing a position which requires a departure from the basic schedules, the utility should supplement the standard filing requirements as required to support its position.

2. The Commission may require utilities to supply information to supplement these minimum requirements during the course of the staff investigation of a specific case. The utility will be required to provide a duplicate copy of any such information requested by Staff to all intervenors to the proceeding as directed by the Commission. It is, however, the intent of the Commission in establishing minimum filing requirements to minimize the subsequent interrogatories and data requests.

3. All schedules submitted to the Commission shall be typed and shall contain the name of the planned witness who will testify to the accuracy of the data.

4. Supportive work papers must be made available for Staff inspection upon request subsequent to the filing.

5. If required data has been previously filed, it may be incorporated by reference.

6. All data, statements and exhibits filed pursuant to

these minimum filing requirements shall be identified by paragraph designation for which they are submitted.

7. Trade secrets, proprietary or otherwise privileged information of the utility shall be made available pursuant to these Rules only upon a showing of good cause and pursuant to a protective order of the Commission.

8. The Commission will require 10 copies of the application for rate relief and the accompanying prepared testimony and supporting exhibits.

9. All test year data, test period and data offered for any other time period will be presented in a format consistent with the uniform System of Accounts unless otherwise ordered by the Commission.

II. General Information

A. Description of Company - If Presently Not On File With Commission

1. Provide a corporate history including dates of incorporation, subsequent acquisitions and /or mergers.

2. Describe completely all relationships between applicant utility and its parent, subsidiaries and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships.

3. Provide a system map indicating all cities and counties and other government subdivisions to which service is provided.

4. Provide a statement of reasons for the proposed increase including an explanation of the major factors which gave rise to the decision to seek a rate adjustment. Also include an estimate of the dollars associated with each such major factor such as "Wage Increase \$50,000" or "Increase in Chemical Expense \$100,000". A detailed reconciliation of each and every item is not required, just the principal items and an estimate of the dollar impact, to the extent possible.

5. Provide a statement identifying any significant element of the application which to the applicant's knowledge represents a departure from prior decisions of the Commission and the associated revenue requirement. This would include proposed accounting changes or accounting changes that have occurred since the last rate Order.

B. Plant Capacity and Service

1. Electric Utilities: Provide an explanation of the system's operation and state plans for any future expansion or modification. Provide schedules relating to generating capacity as follows:

a. A schedule showing latest projections of capacity additions and retirements for the next ten years by unit of generation.

b. A schedule showing reserve capacity at the time of the projected daily system peak for the next ten years and indicate growth rate incorporated in arriving at such peak load projections.

2. Gas Utilities: Provide an explanation of the system's operation, and state plans for any future expansion

or modification of facilities. Describe how respondent obtains gas supply as follows:

- a. Explain how respondent stores or manufactures gas.
- b. Describe the potential for emergency purchases of gas.
- c. Provide the amount of gas in MCF supplied by each of various suppliers in the test year.
- d. Provide plans for future gas supply.
- e. Indicate any existing or anticipated curtailments and explain reasons for same.

3. Telephone: State all major current service objectives and indicate any areas where present service does not meet current internal service objectives. Provide schedules as follows:

- a. Provide a schedule showing each central office, the type of equipment, i.e., SXS, ESS, etc., installed capacity in lines, equivalent lines in use, and estimated date of replacement.

4. Water: Provide a description of all major utility property including an explanation of the system's operation and all plans for any major future expansions or modifications of facilities in the next five years. Provide a system map showing pumping stations, purification, and/or filter plants, reservoirs, wells, springs, booster stations, standpipes, distribution mains and transmission mains. A description of the present and projected supply of water should also be provided.

5. Cable Television: Provide a description of all major system property. Provide a system map showing the location of antennas, headend, earth station and major cable distribution plant. State plans for future system expansion including miles of cable to be added, number of homes passed, expected saturation levels (including basic and premium services) for the next five years.

#### C. Amount and Percent of Increases

1. A schedule showing the dollar amount of the increase by category of service, customer class, or type of service rendered as appropriate and also showing the percent increase over present revenues in the same categories.

### III. Financial Results of Operations

#### A. Financial Summary

1. An overall financial summary must be furnished on Schedule No. 1. The "rate base" calculation for the purposes of the test year should reflect book figures. The extent additional "calculated" amounts are referenced, e.g., Cash Working Capital, these amounts should be consistent with the methodology employed for the test period rate base calculation.

2. Jurisdictional versus Total Company Results. In the event the total company results are different from the results applicable to the Delaware jurisdiction, then two schedules shall be submitted and designated as schedule 1A,

covering the entire company, and Schedule 1B, covering the Delaware jurisdictional results.

#### B. Supporting Documents

1. The following documents must be filed with the application if presently not on file with the Commission:

- a. Annual Report to Stockholders for applicant, its subsidiaries and its parent for last five years.
- b. Annual Reports to Federal Regulatory jurisdictions, such as FERC, REA, FCC, etc., as applicable.
- c. SEC 10K Reports for last five years and most recent SEC 10Q Report for applicant or parent. If both applicant and parent have public stockholders, submit for both.
- d. Most recent proxy statement for applicant or parent. If both applicant and parent have public stockholders, then submit for both.
- e. All securities prospectuses for applicant and parent for most recent five year period.

### IV. Rate Base

#### A. Rate Base Defined

1. 26 Del. C. 102(3) defines Rate Base as follows:

"(3) "Rate base" means:

- a. The original cost of all used and useful utility plant and intangible assets either to the first person who committed said plant or assets to public use or, at the option of the Commission, the first recorded book cost of said plant or assets; less;
- b. Related accumulated depreciation and amortization; less;
- c. The actual amount received and unrefunded as customer advances or contributions in aid of construction of utility plant, and less;
- d. Any accumulated deferred and unamortized income taxes and investment credits related to plant included in paragraph a. above, plus;
- e. Accumulated depreciation of customer advances and contributions in and of construction related to plant included in paragraph a. above and plus;
- f. Materials and supplies necessary to the conduct of the business and investor supplied cash working capital, and plus;
- g. Any other element of property which, in the judgment of the Commission, is necessary to the effective operation of utility."

#### B. Jurisdictional Rate Base Summary

1. Submit a jurisdictional rate base summary on Schedule 2.
2. Indicate on schedule 2 in the column titled "26 Del. C. 102(3) Letter Ref." the appropriate letter reference designating the Section of the Code upon which the applicant relies for the inclusion of each item in Rate Base as set forth in IV A. 1. above.

#### C. Used and Useful Utility Plant

1. Submit schedules showing plant in service by

major plant categories for total company, as allocated to this jurisdiction with adjustments, if any are proposed. This data shall be submitted as Schedule 2A.

2. Where rate base is computed using a twelve-month average, this data will be needed for the end of each month included in the calculation.

3. Where rate base is allocated among jurisdictions, indicate the basis for the allocation factors used.

4. Adjustments proposed must be fully explained.

**D. Intangible Assets**

1. If intangible assets are claimed in rate base, complete Schedule No. 2B.

2. Provide a statement of the specific reasons for inclusion in rate base.

**E. Accumulated Depreciation and Amortization**

1. Submit schedules showing accumulated reserve for depreciation by major plant categories on Schedule No. 2C if records permit.

2. When rate base is computed using a twelve-month average, this data will be needed for the end of each month included in the calculation.

3. When rate base is allocated among jurisdictions, indicate the basis for the allocation factors used.

4. Adjustments proposed must be fully explained.

**F. Unrefunded Customer Advances and/or Contributions in Aid of Construction**

1. Provide a schedule showing the actual amounts at the beginning and end of the test year and test period.

2. If estimated amounts are included, explain the basis of such estimate.

**G. Accumulated Deferred Income Taxes and Unamortized Investment Credit**

1. Provide a complete analysis of all deferred income taxes on Schedule No. 2D. Provide one schedule each for Federal Income Taxes and an additional schedule for State Income Taxes.

2. The specific deferred income taxes shown on Schedule 2D lists some but not necessarily all deferred income taxes that may be applicable to a particular utility, hence the accounts shown should be modified as appropriate.

3. Provide a statement which fully explains the utility's deferred tax accounting practices, i.e., the basis upon which annual tax deferrals are determined and the basis upon which deferred tax reserves are charged or credited to current period.

4. Provide the amount of amortization of Investment Tax Credit and/or Job Development Credit included as a reduction of Income Tax Expense in the test year.

5. Provide the amount of ITC or JDC available but not utilized as of the end of the test year.

**H. Accumulated Depreciation of Customer Advances and Contributions in Aid of Construction**

1. Provide a statement which describes the

accounting procedures used to segregate depreciation reserves between investor provided and contributed property.

2. Provide a Schedule showing the actual amounts at the beginning and end of the test year and test period.

3. If estimated amounts are included, explain the basis of such estimates.

**I. Material and Supplies**

1. If a claim is made for Material and Supplies, provide a Schedule showing the balance in each of the major groupings of material and supplies for each of the twelve months preceding the test year, for the test year and for the test period.

2. If estimated balances are included, explain the basis for such estimates.

3. Explain any unusual fluctuation for the period of time for which monthly balances are included.

**J. Investor Supplied Cash Working Capital**

1. Complete Schedule 2E showing the components of investor supplied cash working capital included in the rate base claim.

2. Other items. If any other items are included in the working capital claim, provide a full and complete explanation in support thereof including the calculation which demonstrates the amounts so included as investor-provided funds with reference to 26 Del. C. 102(3).

**K. Other Element of Property**

1. Schedule 2F shall be completed to provide the amount, description and justification for inclusion in rate base.

2. Provide a statement of the specific reasons for inclusion in rate base with reference to 26 Del. C. 102(3).

3. If a rate base claim is made for property under construction but not used and useful in whole or in part during the test period, provide a schedule showing each major project and indicate whether or not the project will add capacity or replace existing capacity or both. If major units of capacity are being added, show in calculation the additional revenue expected to be realized. If major units of capacity are being retired, indicate the type of property, its original cost, accumulated reserves for depreciation and the expected date of retirement from service.

**V. Net Operating Income**

**A. Jurisdictional Summary of Net Operating Income**

1. Submit a jurisdictional summary of net operating income on Schedule No. 3 for the test year on an actual basis and for the test period.

**B. Revenues**

1. Submit a schedule showing operating revenues by major revenue category, including other operating revenues and uncollectible operating revenues, for the test year, and for the test period. This data shall be submitted on Schedule 3A.

2. Electric, Gas and Water Utilities. For each tariff rate, submit a schedule showing the volume of tariff unit sales

for two years preceding the test year, the test year, and the test period. For the purpose of this section, the volume of tariff unit sales means:

- Electric - KWH sold
- Gas - MCF sold
- Water - Gallons sold and hydrant fees.

3. Provide a schedule showing the dollar revenues associated with the unit volume shown in Section V.B.2. Electric and gas utilities should show Fuel and Gas Adjustment revenues separately by customer class.

4. Telephone and Cable Television Companies. For each tariff rate revision, submit a schedule showing the number of units in service consistent with the test year and/or the test period. Opposite the units in service show the present and proposed rates for service and the present and proposed revenues.

5. If test period volumes of sales or tariff units are based on an estimate or forecast, provide a full and complete explanation of the basis and assumptions underlying such forecast, including weather assumptions and any price elasticity effects.

6. Adjustments to test period revenues should be fully detailed and explained including all mathematical calculations related thereto. This information should follow Schedule 3A with appropriate adjustments referenced to the amounts shown on Schedule 3A.

#### C. Operating Expenses

1. Submit a schedule showing operating expenses, by major expense category for the test year and for the test period. This data shall be submitted on Schedule 3B.

2. Adjustments to test period operating expenses should be fully detailed and explained including all mathematical calculations related thereto. This information should follow Schedule 3B with appropriate adjustments referenced to the adjustment amounts shown on Schedule 3B.

3. Copies of invoices should be attached for raw materials purchased at prices higher than those experienced during the test year and an adjustment is made where a future test period is not used.

4. Submit a Schedule 3C showing test year and test period payroll and employee benefit expense. The expense portion of the total payroll costs should equal the payroll and benefit expense included in the various categories of Schedule 3B.

5. Complete Schedule 3D for the five highest paid executives showing the most recently approved base salary and the value of other benefits on an annual basis using the most recent actual data available.

6. Provide a statement of procedures used for determining depreciation rates utilized to compute the depreciation expense claim (Schedule 3B), including a statement of the depreciation rates either approved by or implicit in the rate determination made by the Commission in the last rate proceeding. Provide a schedule showing the

calculation of claimed depreciation expense by major plant categories (if not provided in the detailed supporting adjustments in Item C(2)) if available.

7. Provide a copy of the most recent depreciation study that is relied on to support the depreciation rates used for the purpose of Schedule 3B if a change in depreciation rates is proposed.

8. Electric utilities only shall submit the following for the most recent actual twelve month period preceding the test year and for the test year and test period.

a. A schedule showing the KWH generated by generation unit along with the applicable fuel, other and maintenance expenses.

b. A detailed analysis of power purchased from others including KWH purchased and cost.

c. A detailed analysis of interchange power transactions setting forth separately purchased power and power sold and the dollars associated with each.

d. A schedule showing the details of any temporary capacity sales or purchases.

e. If deferred fuel cost policy is followed, describe the procedure and state manner in which amount of deferred fuel cost on balance sheet at end of most recent twelve month period reported was determined and state in which month such fuel expense was incurred. Provide amount included in test year expense which is derived from deferred fuel cost.

f. Submit a schedule showing fuel cost in excess of base compared with fuel cost recovery by months for the most recent twelve month period and for the test year.

g. Provide a reconciliation of total KWH generated, purchased or required through interchange with total KWH sold for resale, retail, interchange, interdepartment use, system losses, etc.

9. Furnish test year summary of sales promotion, advertising and miscellaneous sales expenses on Schedule 3E. Classify advertising expense by purpose, i.e., product or service promotion, service aids, personnel and institutional.

10. Furnish a schedule of all test year contributions for educational or other charitable purposes which are included in the operating expense totals which applicant seeks to recover from rate payers on Schedule 3F.

11. Submit a statement showing amounts spent in test year and test period on influencing legislation both at the state and national levels which applicant seeks to recover from ratepayer. Where this activity is less than full time, furnish the basis for allocations of payroll and related costs.

12. Furnish a listing of all test year and test period dues paid or to be paid by the company for social and service clubs which applicant seeks to recover from ratepayer. Include costs paid directly by company for any executive or employee recreational or "conference" facilities. Complete Schedule 3G.

13. Provide an analysis of actual and project rate

case expenses on Schedule 3H.

14. Provide a schedule by major expense category of all the amounts charged or credited from each affiliated company for the test year and the test period. Provide the basis of allocation or basis of charging. State whether there has been a change in allocation method or pricing formula since the last general rate case and, finally, describe the services or products provided in Delaware and the benefits of such arrangements.

15. Operating Taxes.

a. Complete Schedule 3I to agree with the amount shown on Schedule 3, line 12, for the test year and for the test period.

b. Complete Schedules 3J and 3K in support of the amount of current and deferred state and federal income tax claimed by the utility for ratemaking purposes as reflected in total on Schedule 3I.

c. Provide a statement of the utility's income tax accounting practice with respect to timing differences related to liberalized depreciation, the Asset Depreciation Range System, accelerated amortization and cost of removal and all other timing differences such as employee benefits and taxes capitalized.

d. Provide a statement of the utility's accounting practice with respect to Investment Tax Credits (ITC) and Job Development Credits (JDC) including a copy of all elections filed with the Internal Revenue Service related thereto.

e. Utilities which "normalize" all or any portion of ITC or JDC must complete Schedule 3L.

f. If the utility is part of an affiliated group of companies and its federal income tax return is filed as part of a consolidated federal income tax return, please provide a statement of the procedure used to allocate the consolidated federal income tax liability, the benefits of the consolidated return, and how those benefits are reflected on the utility's books.

g. Complete Schedule 3M for all other Federal, State and local taxes for the test year and for the test period.

D. Allowance for Funds Used During Construction (AFUDC)

1. Provide a schedule showing the following:

a. The AFUDC rate employed by the Commission in the last rate Decision.

b. The AFUDC rate used in each month from the end of the test period in the last case through the end of the test year and test period.

2. Provide a statement which describes the methodology employed to complete the AFUDC rates for all periods of time specified in Item 1. above.

3. Provide a statement which fully describes how the AFUDC is applied in the accounting procedures.

E. Other Income

1. Provide a schedule which describes the nature and amount of each item of other income for the test year and test period.

VI. Rate of Return

A. Summary of Claimed Rate of Return

1. A summary report of the proposed fair rate of return shall be supplied on Schedule 4 which contains a weighted cost of capital analysis.

2. The Company's actual and estimated capital structure shall be submitted on Schedule 4A for the end of the test year and test period. A capital structure which is based on a time period beyond the test year should be accompanied by a statement of projected new issues and retirements.

B. Embedded Cost of Debt

1. Describe how short-term debt is allocated between rate base and non-rate base CWIP. Describe compensating balance requirements of credit line banks and supply documentation in support of such requirements. If the compensating balance requirements exceed the cash and float included in working capital claim, give a statement explaining the excess.

2. Complete Schedules 4B and 4C to show the composition of the embedded cost of long-term debt or provide the information in some other manner as the Company would normally develop such costs. Use the debt costs most appropriate to the capital structure adopted, e.g., if a test year end capital structure is used, use a test year end embedded cost analysis.

3. Describe long-term debt reacquisitions by company and parent company, if applicable, as follows: reacquisitions by issue by year; total gain by acquisitions by year; accounting of gain for income tax and book purposes.

4. In the event that applicant believes the true or economic cost of debt exceeds the nominal costs shown in Schedule 4C because of convertible features, sale with warrants or for any other reason, a full statement of the basis for this claim should be provided.

C. Embedded Cost of Preferred Stock

1. Complete Schedules 4D & E to show the cost of preferred stock. Use the preferred stock cost rates most appropriate to the capital structure adopted for cost of capital computations, i.e., if a test year end capital structure is used, use a test year end embedded cost analysis.

2. Describe preferred stock reacquisitions by company and by parent company, if applicable, as follows: reacquisitions by issue by year; total gain by acquisitions by year; accounting for gain for income tax and book for financial reporting purposes.

3. In the event that applicant claims a true or economic cost higher than the nominal rate shown in Schedule 4E due to convertibility or for any other reason, a full statement of the basis for this claim shall be furnished.

D. Common Equity Cost Rates

1. Provide data on all common equity public stock offerings (including registered secondary offerings) for the current year and for the previous five calendar years. Use Schedule form 4F.

2. Provide a summary statement of all stock dividends, splits or par value changes in last five years.

3. Provide comparative financial data on Schedules 4G and 4H for the test period without rate increase for the test year, for the most recent calendar year and for the next most recent calendar year.

4. Provide complete analysis and support of claimed common equity return rate.

5. State what coverage requirements or capital structure ratios are required in the most restrictive of applicable indentures and how these measures are to be computed.

#### E. Parent-Subsidiary Relationship

1. Where applicant is a subsidiary of a parent corporation, the data provided for in Schedules 4A, B, C and D shall be provided for the parent company or on a consolidated basis as well as for applicant.

2. If applicant proposes to utilize the capital structure or capital costs of the parent company, or provide such data on a consolidated basis, the reasons for this claim must be fully stated and supported.

#### VII. Gross Revenue Conversion Factor

A. Provide a calculation on Schedule 5 to show how many dollars of gross revenue increase are required to realize \$1.00 of net return increase.

#### VIII. Rates and Tariffs

A. Provide a copy of proposed Tariff Schedules.

B. By appropriate marginal designation, in the proposed Tariff Schedules, classify proposed changes in accordance with code shown below:

C Changed Regulation

D Discontinued Rate or Regulation

I Increased Rate

N New Rate or Regulation

R Reduced Rate

S Reissued Matter

T Change in text without change in rate or regulation

C. Provide rationale for proposed tariff changes (other than across the board percentage increases).

D. Provide a cost of service study, showing rates of return by customer class or type of service rendered for the test year and for the test period, if available, at present and proposed rates.

E. For test period only, provide schedule, by customer classification or category of service, showing present revenues, pro forma adjustments, proposed increases and percent of increase.

F. Provide detailed calculation substantiating the

adjustment for additional revenues from annualizing changes in customers and growth in use per customer during test year if applicable.

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#### Minimum Filing Requirements

##### Part A

#### Rate Increase Applications - Major Utilities

##### Example Schedules to be Completed

(The example applications are not reproduced here. For copies of the example applications please contact the

**Registrar of Regulations** or the **Public Service Commission**)

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#### MINIMUM FILING REQUIREMENTS - PART B RATE INCREASE APPLICATION - SMALL UTILITIES

#### I. Instructions

##### A. Prefiling Announcement

In order for the Commission to schedule its future workload in an efficient manner, every public utility shall file with the Commission a Notice of Intent to file a general rate increase application not less than two (2) months prior to filing its application or notice of increase. If a regulated company cancels, changes or delays a proposed general rate increase application previously reported to the Commission, an amended report must be filed promptly reflecting such change of plans.

##### B. Test Year

1. The test year is the actual historical period of time for which operating and financial data will be required. The test year must include the actual "Per Books" results of operation for a twelve month period ending no later sooner than one month after the final closing of the company's books for that accounting period, but no later than four months prior to the filing of the application for increased rates. For example, if the actual results of operation for the twelve months ending December 31, 19xx, are used for the purpose of the test year, the application must be filed no later than April 30 of the following year.

2. It is suggested but not required that the test year selected correspond with the company's financial year.

3. The test year may be adjusted to reflect changes that are known and measurable at the time of the filing.

##### C. Due Date

The information required in subsequent sections of Part B is to be filed with the Commission at the time of the utility's application for an increase in rates.

##### D. Testimony and Exhibits

If the utility plans to submit prepared testimony and exhibits, they must be filed coincident with the filing of the application for rate relief.

**E. Penalty for Non-Compliance**

The Commission Staff will review all filings applications for compliance with the format and instructions furnished herein and notify the utility within 30 days after the date of filing application of any deficiencies defects in compliance. The utility, after such notification by the Commission Staff, will then have 30 days to correct these deficiencies defects. If such deficiencies defects are not corrected, the Commission may reject a utility's rate filing application for non-compliance with the Minimum Filing Requirements.

In addition, if such defects materially impair the application, the Commission may reject the application in its entirety, and require the filing of a new application. Grounds for such rejection may include, without limitation:

a.) Changes to the Test Year Data Data Filed as representing Financial Book Data (Final Close).

b.) Changes to Non Financial Test Year Data (such as customer counts, degree-day data, etc..) that materially impair the application, i.e., more than one percent of the revenue requirement.

**F. General Guidelines**

1. Schedules shown are for illustrative purposes and may be modified to fit the individual company as long as the data intent is complied with. The burden of proof remains by Statute on the utility; therefore, if applicant utility believes that additional information is necessary to support its case or is proposing a position which requires a departure from the basic schedules, the utility should supplement the standard filing requirements as required to support its position.

2. The Commission may require utilities to supply information to supplement these minimum requirements during the course of the Staff investigation of a specific case. The utility will be required to provide a duplicate copy of any such information requested by Staff to all intervenors to the proceeding as directed by the Commission. It is, however, the intent of the Commission in establishing minimum filing requirements to minimize the subsequent interrogatories and data requests.

3. All schedules submitted to the Commission shall be typed and shall contain the name of the person responsible for the preparation of the data.

4. Supportive work papers must be made available for Staff inspection upon request subsequent to the filing.

5. If required data has been previously filed, it may be incorporated by reference.

6. All data, statements and exhibits filed pursuant to these minimum filing requirements shall be identified by paragraph designation for which they are submitted.

**II. General Information**

A. Description of Company (If presently not on file with Commission or if it has been submitted in a prior proceeding, it can be incorporated by reference and only include updates)

1. Provide a corporate history including dates of incorporation, subsequent acquisitions and/or mergers.

2. Describe completely the ownership of the utility and all relationships between applicant utility and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the intercompany relationships.

3. Provide a system map indicating all cities and counties and other government subdivisions to which service is provided.

4. Provide a statement of reasons for the proposed increase including an explanation of the major factors which gave rise to the decision to seek a rate adjustment. Also include an estimate of the dollars associated with each such major factor.

**III. Financial Results of Operations**

A. An overall financial summary must be provided on Schedule 1. The information needed to complete Schedule 1 is obtained from subsequent Schedules.

B. Supporting Documents - Submit internally prepared financial statements or those prepared by an outside accountant or CPA for the most recent twelve month period available to correspond with the historical test year selected by the utility.

**IV. Rate Base****A. Rate Base Defined**

1. 26 Del. C. 102 (3) defines Rate Base as follows:  
“(3) “Rate base” means:

a. The original cost of all used and useful utility plant and intangible assets either to the first person who committed said plant or assets to public use or, at the option of the Commission, the first recorded book cost of said plant or assets; less;

b. Related accumulated depreciation and amortization; less;

c. The actual amount received and unrefunded as customer advances or contributions in aid of construction or utility plant, and less;

d. Any accumulated deferred and unamortized income taxes and investment credits related to plant included in paragraph a. above, plus;

e. Accumulated depreciation of customer advances and contributions in and of construction related to plant included in paragraph a. above, and plus;

f. Materials and supplies necessary to the conduct of the business and investor supplied cash working capital, and plus;

g. Any other element of property which, in the judgment of the Commission, is necessary to the effective operation of utility.”

**B. Rate Base Summary**

1. A Rate Base Summary must be provided on Schedule 2. The rate base elements set forth on Schedule 2 correspond with the definition of Rate Base set forth on IV

above. Utilities are not required to use all of these elements or may wish to include others not shown under the category of "Other Elements of Property" (line 10).

2. Indicate on Schedule 2 in the column titled "26 Del. C. 102 (3) Letter Ref." the appropriate letter reference designating the Section of the Code upon which the applicant relies for the inclusion of each item in Rate Base as set forth in Item IV. B. 1. above.

3. The column on Schedule 2 "Actual at Test Year End" means "per books" with the exception of Investor Supplied Cash Working Capital, line 8. For "Actual Test Year End" Investor Supplied Cash Working Capital, use the same procedures used for developing "claimed rate base" but applied to test year actual results of operations.

4. Proposed adjustments to or computations of rate base elements (i.e., Investor Supplied Cash Working Capital) must be fully explained on Schedule 2A.

5. Detailed description of Utility Plant in Service and related depreciation reserves must be provided on Schedule 2B. The totals must agree with the column titled "Actual Test Year End" on Schedule 2.

C. Please provide a narrative statement covering the following points for monopoly services not subject to competition:

1. Please explain any physical deficiencies in the present property and an estimate of the cost to correct such deficiencies. If plans are underway, disclose the nature of such plans.

2. Provide an estimate of customer or usage growth for two years following the end of the test year and how the utility plans to meet such growth and provide the estimated cost of providing additional facilities to meet expected growth.

3. Gas and water utilities must provide a narrative description of their respective sources of supply.

#### V. Net Operating Income Summary

A. A summary of net operating income must be provided on Schedule 3.

1. The "Actual for Test Year" column means actual "per books" revenue and expense for the historical test year selected without exception.

2. Operating revenues and expenses should be set forth by type of service or customer class and operating expenses by type. Supplemental schedules may be used for this purpose so long as they conform to the format of Schedule 3.

3. Proposed adjustments to test year operating revenues or expense must be fully explained on schedule 3A. Supporting documentation should be provided when available such as formal wage agreements, copies of invoices reflecting higher prices for materials purchased, tax notices, etc.

4. A calculation of Federal and State Income Taxes must be submitted on Schedule 3B.

5. Provide a narrative explanation of any Schedule "M" items (items included in determining Federal and State Income Taxes not included in Income Available for Return e.g. capitalized portion of Social Security taxes and relief and pensions (line 8), depreciation on IDC, S/S taxes and R/P capitalized (line 6), also any surplus items affecting taxable income not included in line 1) and if deferred taxes are provided on the utility's books, explain the nature of the deferred taxes and the amounts related to the test year periods as set forth on Schedule 3B.

6. Provide a calculation of present annual revenues based on test year volume of sales at present tariff rates and also showing the revenues expected to be derived from proposed rates on Schedule 3C. Utilities which have "block" rates are to base this calculation on a bill analysis for the test year selected.

B. Provide a narrative statement covering cost increases expected to be incurred over a two-year period following the end of the test year, but not included in the operating expense claim for monopoly services not subject to competition.

#### VI. Cost of Capital Summary

A. A Cost of Capital Summary must be provided on Schedule 4 based on actual test year data and on the basis of the utility's fair rate of return claim.

1. If the fair rate of return claim is based on a capital structure different from test year actual, explain the reasons for such differences. If the difference is related to planned new financings or refinancing, please provide the detail with respect to such planned financing including the amount, cost rate, terms, etc.

2. Provide an explanation, with supporting calculations, of the methodology used to arrive at the cost rate for common equity. If a rate of return study was performed, provide a copy of such study.

3. Provide a detailed calculation of the claimed cost of debt and preferred stock on Schedules 4A and 4B, respectively.

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#### Minimum Filing Requirements

##### Part B

##### Rate Increase Applications - Small Utilities

##### Example Schedules to be Completed

(The example applications are not reproduced here. For copies of the example applications please contact the

**Registrar of Regulations** or the **Public Service Commission**)

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed striken through]**~~ indicates language deleted at the time the final order was issued.

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**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

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**DEPARTMENT OF AGRICULTURE****DELAWARE THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,

Sections 10103 & 10128(m)(1)

(3 Del.C. 10103, 10128(m)(1))

**BEFORE THE DELAWARE THOROUGHBRED RACING COMMISSION****IN RE: PROPOSED RULES AND REGULATIONS ORDER**

Pursuant to 29 Del. C. section 10118, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order promulgating the proposed amendment of Rule 13.18 of the Commission's Rules. Following notice and a request for written submissions:

**SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED**

1. The Commission posted public notice of the proposed new Rule 13.18 regarding Prohibition on Racing

Claimed Horse. Notice was posted in the Register of Regulations and in the News-Journal and Delaware State News. The Commission received no written comments from the public concerning the proposed regulation.

2. The Commission conducted a public hearing on April 16, 1998 on the proposed new rule. The Commission received comments from ten witnesses at the hearing.

i. Roger Legg spoke as the President of the Horsemen's Association. Mr. Legg stated that the association sent a survey to the horsemen requesting responses on the proposed rule. The association received 400 hundred responses. of the responses, 214 members wanted to keep the existing claiming rule, 58 members were in favor of the proposed rule, 73 members favored the New Jersey rule, and 130 members favored the old Commission rule providing that a claimed horse could only race for a 25%. increased price. Mr. Legg proposed that the Commission consider a South Florida rule that if a horse is claimed, the owner can not drop the horse in price for thirty days.

ii. Carl Harford stated that the proposed rule would be helpful and was in favor of the rule.

iii. Frank Passero, Jr. stated that stated that the rule would hurt the owners and prevent them from racing horses

on the rise as well as racing horses on the cheap.

iv. Tim Tollick, a trainer, stated that the survey from the horsemen's association speaks for itself. The Commission rules should not restrict an owner's ability to claim horses and race them.

v. Dr. Fazio spoke as the track veterinarian. Dr. Fazio has seen a number of horses pulling up lame that had been raced after a drop in claiming price. Dr. Fazio stated that his job was to protect the horses that were racing at Delaware Park.

vi. Damien Pollard stated that the horse should be allowed to race if the state veterinarian gives the horse a medical okay.

vii. Pete Alexander stated that the track veterinarians should take note of horses that are being dropped down in price and have two veterinarians examine the horse prior to racing.

viii. Chris Warren from Delaware Park stated that the proposed rule would hurt the track's ability to fill up races. Mr. Warren stated that the rule would prevent a horse from racing for at least twelve days after a claim and would put the track at a disadvantage.

ix. Wally Nielson stated that the horsemen's survey was sent to 2,000 members and only 500 responses were returned. In the last meet, Mr. Nielson claimed a horse that had been claimed eight times in a row. The horse was as sound and was not affected by all the claims.

x. Harland Sanders spoke in favor of the new rule.

#### FINDINGS OF FACT

3. The public was given notice and an opportunity to provide the Commission with comments in writing on the proposed amendment to Rule 13.18. The Commission received no written comments on the proposed repeal of the rule. The statements from the public are contained in paragraph 2 of this Order.

4. The Commission proposed Rule 13.18 which would provide:

#### 13.18 Prohibition on Racing Claimed Horse:

No horse claimed in a claiming race shall be raced for a minimum period of fourteen days after the day of the race unless the Racing Secretary and the Stewards determine that good cause exists to allow the horse to race within a shorter period, which is at least twelve days after the day of the claiming race.

5. The Commission receives extensive public comment at its hearing which opposed the proposed new rule. The majority of the horsemen responding to the survey sent by the horsemen's association opposed the rule. The majority

of the public comment at the hearing indicated that the proposed rule was too restrictive on owners of claimed horses. The track representative from Delaware Park also opposed the rule since it would hamper the track in filling up races. In light of this record, the Commission does not find that the proposed rule is necessary to comply with the statutory authority of the Commission under 3 Del. C. section 10103 to regulate the conduct of participants in thoroughbred racing and for the effective enforcement of 3 Del. Code chapter 101.

6. The Commission finds that the proposed Rule 13.18 should not be adopted as proposed. The Commission will consider this matter further and attempt to promulgate another rule that addresses the problems of the racing of claimed horses.

#### CONCLUSIONS

7. The proposed Rule 13.18 was promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. section 10103. Based on the public comments and the Commission's own consideration of the proposed rule, the Commission concludes that the proposed rule 13.18 should not be adopted as proposed.

IT IS SO ORDERED THIS 26<sup>th</sup> day of May, 1998.

Bernard Daney, Chairman  
Duncan Patterson, Commissioner  
Deborah Killeer, Commissioner

~~{13.18 Prohibition on Racing Claimed Horse:~~

~~**No horse claimed in a claiming race shall be raced for a minimum period of fourteen days after the day of the race unless the Racing Secretary and the Stewards determine that good cause exists to allow the horse to race within a shorter period, which is at least twelve days after the day of the claiming race.}**~~

**DEPARTMENT OF  
ADMINISTRATIVE SERVICES****DIVISION OF PROFESSIONAL REGULATION****BOARD OF EXAMINERS IN OPTOMETRY**

Statutory Authority: 24 Delaware Code,  
Section 2104(a)(1) (24 Del.C. 2104(a)(1))

BEFORE THE DELAWARE BOARD OF EXAMINERS IN  
OPTOMETRY

IN RE: ADOPTION OF REGULATIONS.

Pursuant to due notice of time and place of hearing published in the News Journal and the Delaware State News on December 30, 1997, and pursuant to the requirements of 29 Del. C. section 10115, having published the proposed regulations in the Register of Regulations on January 1, 1998, a public hearing on the adoption of proposed new rules and regulations was held before the Delaware Board of Examiners in Optometry ("Board") on January 22, 1998, in the Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Kent County, Delaware. A quorum of the Board was present.

As a result of the first public hearing, and upon a determination that substantive changes to the proposed regulations would be required, a second public hearing was scheduled. Pursuant to due notice of time and place of hearing published in the News Journal and the Delaware State News on April 7, 1998, and pursuant to the requirements of 29 Del. C. section 10115, having published the proposed regulations in the Register of Regulations on April 1, 1998, a public hearing on the adoption of proposed new rules and regulations was held before the Delaware Board of Examiners in Optometry ("Board") on May 7, 1998, in the Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Kent County, Delaware. A quorum of the Board was present.

SUMMARY OF THE EVIDENCE:

1. Mr. Jeff Filandro, an optometry intern, was recognized by the Board and presented the following comments regarding internships at the January 22, 1998 public hearing.

Mr. Filandro testified that the proposed Regulation 3.01 does not indicate the status of an intern at the conclusion of the six (6) month internship: can an intern continue to practice under the temporary license or does it end at that time? His concern related to the time lapse between the end of the internship and the granting of full licensure by the Board at its next meeting. Without temporary licensure, the interns cannot work during this time lapse.

Mr. Filandro further testified that while proposed

Regulation 3.04 limits the number of interns that a supervisor may have, it does not indicate how many student externs may be in the supervisor's office. Mr. Filandro was concerned that this was a loophole for optometric practices to avoid the intent of having one-to-one supervision of interns.

Mr. Filandro also expressed his concern that Section 4 of the proposed regulations might permit any therapeutically licensed practitioner to obtain a Delaware license.

2. Carl Maschauer, O.D., a Delaware licensed optometrist, was recognized by the Board and presented the following comments regarding internships at the January 22, 1998 public hearing.

Dr. Maschauer suggested that the term duration be defined as a period no less than six months and no greater than the next Board meeting following the six month period. He recommended that the definition be placed in Section 1 of the proposed regulations.

3. Jeffrey Hilovsky, O.D., a Delaware licensed optometrist, was recognized by the Board and presented the following comments regarding internships at the January 22, 1998 public hearing.

Dr. Hilovsky testified that he could find no justification for retaining the last sentence in proposed Regulation 3.04. Practices that have more than one licensed Delaware optometrist would be unnecessarily limited by this provision.

4. No further comment was presented by the public at the May 7, 1998 public hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Board made the following findings and conclusions based upon the testimony and comments received at the public hearings:

1. The Board found that there was no need to clarify in the regulations that an intern may practice under a temporary license only when the intern is in a Board-approved internship under the supervision of a licensed Delaware optometrist or ophthalmologist. The statute is clear on this point. The Board found, however, that it should clarify that no intern may practice on a temporary license beyond the duration of the internship.

The Board further found that there is concern with the lapse in time between the end of an internship and the granting of full licensure by the Board. The lapse could result in the unintended lack of employment for an intern. The Board found that it would be in the best interests of the intern and the public that an intern be able to continue practicing on a temporary license up until the date of the next scheduled Board meeting. This would be permitted with the proviso that the internship continues under the supervision of a

licensed Delaware optometrist or ophthalmologist. The Board concluded that proposed Regulation 3.01 should be amended to verify the completion of the internship and define the term "duration" as it appears in the last sentence of 24 Del. C. section 2110. The Board found that it was more appropriate to place the definition in the proposed Regulation 3.01 as opposed to the Definitions section as the definition was specific to this section only.

The Board proposed at the January 22, 1998 public hearing to amend proposed Regulation 3.01 to add a new subsection "C." to read as follows:

C. A letter must be received by the Board from the supervisor verifying the completion of the internship.

The Board further proposed at the January 22, 1998 public hearing to amend proposed Regulation 3.01 to add a new subsection "D." to read as follows:

D. For purposes of this Section and 29 Del. C. section 2110, the term "duration" shall be defined as "a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period." No intern may practice on a temporary license beyond the duration of the internship.

The Board concluded that the latter provision was a substantive change and that a further public hearing would have to be scheduled.

2. With regard to proposed Regulation 3.04, the Board found that the intent of the internship provisions in the statute and proposed regulations was to provide one-to-one supervision during the period of the internship. This requirement is in the best interests of the public as it ensures that the work performed by the intern is overseen by a Delaware licensed optometrist or ophthalmologist who will take responsibility for that work. While the proposed regulation provides for this one-to-one supervision for interns, it does not address the concern that student externs could also be performing similar duties within the office(s) of an optometric practice. It would abrogate the intent of the statute and proposed regulations to have more than one intern or extern under the supervision of an individual Delaware licensed optometrist or ophthalmologist. Accordingly, the Board concluded that proposed Regulation 3.04 should be amended to have the one-to-one supervision include student externs.

The Board initially found that there was no justification for the limitation of having only one intern or student extern in any office during the six month period of the internship. The concern at the January 22, 1998 public hearing was that such a requirement would not permit offices with more than one Delaware licensed optometrist or ophthalmologist to have

more than one intern or student extern. As the intent was to have one-to-one supervision, there appeared to be no basis for the restriction of one intern in any office as long as there is a one-to-one ratio between supervisors and interns in that office.

Subsequent to the initial public hearing, the Board discussed the proposed amendment at its February 26, 1998 meeting. At that meeting, the Board found that by retaining the last sentence in proposed Regulation 3.04, and changing the word "office" to "practice", this would eliminate the concern that interns would practice unsupervised at satellite offices while the supervisor practiced at a primary office, or visa-versa. It would also eliminate the concern that supervisors in a multiple optometrist or multiple ophthalmologist practice would not actually take responsibility for supervising the intern.

The Board also found, at the suggestion of legal counsel, that the phrases "supervising optometrist" and "supervising optometrists" were inconsistent with the use of the terms "supervisor" and "supervisors" throughout this section. The Board found that the proposed regulation should be amended to use consistent terminology throughout. The Board proposed at the January 22, 1998 public hearing to amend proposed Regulation 3.04 to add the phrase ", or student extern," following the word "intern" in the second sentence. The Board further proposed at the January 22, 1998 public hearing to delete the last sentence in proposed Regulation 3.04, however, at the February 26, 1998 meeting, the Board decided to leave the provision as it existed with the exception of changing "office" to "practice" for the reasons indicated above. The Board also proposed at the January 22, 1998 public hearing to substitute the terms "supervisor" or "supervisors" in lieu of the phrases "supervising optometrist" or "supervising optometrist" wherever they might appear within this section. The amended regulation will read as follows:

3.04 All ~~supervising optometrists~~ supervisors must supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No ~~supervising optometrist~~ supervisor may be a supervisor for more than one intern, or student extern, at a time. Only one intern shall be permitted at any office practice for any period of time.

The Board concluded that the student extern provision and the changes to the last sentence were substantive changes and that a further public hearing would have to be scheduled.

3. With regard to proposed Regulation 3.05, the Board found, at the suggestion of legal counsel, that the phrases "supervising optometrist" and "supervising optometrists" were inconsistent with the use of the terms "supervisor" and "supervisors" throughout this section. The Board found that

the proposed regulation should be amended to use consistent terminology throughout.

The Board also proposed at the January 22, 1998 public hearing to substitute the terms "supervisor" or "supervisors" in lieu of the phrases "supervising optometrist" or "supervising optometrist" wherever they might appear within this section. The amended regulation will read as follows:

3.05 All acts which constitute the practice of optometry under 24 Del. C. section 2101(a) may be performed by the intern only under the following conditions:

A. ~~The supervising optometrist~~ A supervisor shall be on the premises and immediately available for supervision at all times;

B. All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

C. A ~~supervising optometrist~~ supervisor shall at all times effectively supervise and direct the intern.

The Board found that these changes were not substantive.

4. With respect to Section 4 of the proposed regulations, the Board found that no changes were necessary based upon the comments presented at the January 22, 1998 public hearing. The statute is clear that the reciprocity (endorsement) provisions are adequate to protect the public. They provide that a non-Delaware licensed optometrist may obtain a Delaware therapeutic license when the reciprocal state's licensing requirements are the same or greater than those required for licensure in Delaware. If the therapeutic requirements are less than those in Delaware, a non-Delaware licensee may still obtain licensure if the requirements of subsections (a) and (b) of 24 Del. C. section 2108 are satisfied. In all cases, the non-Delaware licensee must have practiced in good standing in the reciprocal state for not less than five (5) years.

## DECISION AND ORDER:

Based upon the findings and conclusions above, the undersigned, constituting a quorum of the Delaware Board of Examiners in Optometry, adopt the proposed Regulations published in the Register of Regulations, as amended above and attached hereto as Exhibit A, as the Rules and Regulations of the Delaware Board of Examiners in Optometry. The Rules and Regulations shall become effective on July 15, 1998, after publication of this Order and the final Rules and Regulations in the Register of Regulations.

SO ORDERED this 11th day of June, 1998.

Susan Betts, O.D.                      President  
Marina Ney                              Public Member

Phyllis Chambers, O.D.    Secretary  
Mark Metzelaar                Public Member  
Michelle R. Haranin, O.D. Professional Member

## DELAWARE STATE BOARD OF EXAMINERS IN OPTOMETRY

### RULES AND REGULATIONS

- SECTION 1. Definitions
- SECTION 2. Qualifications and Examinations
- SECTION 3. Internship
- SECTION 4. Reciprocity
- SECTION 5. Use of Diagnostic Drugs
- SECTION 6. Use of Therapeutic Drugs
- SECTION 7. Minimum Standards of Practice
- SECTION 8. Ethics
- SECTION 9. Hearings
- SECTION 10. Continuing Education Requirements
- SECTION 11. Therapeutic Certification
- SECTION 12. Unprofessional Conduct

### SECTION 1. DEFINITIONS

#### A. Premises:

For purposes of 24 **Del.C.** Section 2118(b) and these regulations, the phrase "on the same premises" shall be defined as:

being within the immediate physical boundaries of the office of the licensed supervising practitioner.

The "office" of the licensed supervising practitioner shall not include space, within a building or structure owned or leased by the licensed supervising practitioner, in which the licensed supervising practitioner does not engage in the practice of medicine, osteopathy, ophthalmology or optometry.

#### B. Supervision:

For purposes of 24 **Del.C.** Section 2118(b) and these regulations, the term "supervision" shall be defined as:

the physical presence of the licensed practitioner at some time during the fitting for the purpose of evaluating and verifying the contact lens fit and the patient's ocular health.

#### C. Duly licensed:

For purposes of 24 **Del.C.** Section 2106(a) and these regulations, the term "duly licensed" shall be defined as:

a person who satisfies the applicable requirements

under 24 **Del.C.** Section 2107, 2108, 2110 and 2111 (or alternatively Section 2109 and 2111), and who has been issued a license in good standing in accordance with Section 2112. A person holding a valid temporary license shall not be deemed to be duly licensed for purposes of Chapter 21, Title 24 and these regulations, and may only engage in the practice of optometry as outlined in Section 2110 and Section 3 of these regulations.

D. Dispensing:

The practice of optometry shall include the dispensing of contact lenses. "Dispensing" shall be defined as:

"Contact lens dispensing" means the fabrication, ordering, mechanical adjustment, dispensing, sale and delivery to the consumer of contact lenses. Contact lenses must be dispensed in accordance with a written contact lens prescription from a licensed physician or optometrist which includes lens curvature, diameter, power, material, manufacturer and an expiration date not to exceed one year, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea and evaluating the physical fit of the contact lenses.

## SECTION 2. QUALIFICATIONS AND EXAMINATIONS

2.01 Every candidate for registration must meet the following qualifications:

A. Have received a degree of "Doctor of Optometry" from a legally incorporated and accredited optometric college or school which has been approved by the appropriate accrediting body of the American Optometric Association.

B. Pass the substantive and clinical examinations required by 2.02 of these regulations.

C. Complete the internship required by 24 **Del.C.** Section 2110 and Section 3 of these regulations. An individual is duly licensed after completing the internship requirement as well as all the other requirements in Section 2107 of this Statute. (For reciprocal applicants, see Section 4 of these regulations)

D. All applicants for therapeutic licensure must be CPR certified for both children and adults. All therapeutic optometrists must keep their CPR certification for both children and adults current.

E. Has not engaged in conduct that would constitute grounds for disciplinary action, and has no unresolved disciplinary proceedings pending in this or any other jurisdiction. It shall be the responsibility of the candidate to submit to the Board a certified statement of good standing from each jurisdiction where he/she is currently or has been previously licensed.

2.02 Every candidate shall pass, at a score determined by the National Board of Examiners in Optometry, the substantive and clinical portions of the examination given by the National Board of Examiners in Optometry. The clinical examination given by the National Board of Examiners in Optometry may be taken as part of the National Board Examination or as a separate clinical skills and/or TMOD examination given by the National Board of Examiners in Optometry as the State Board shall designate.

## SECTION 3. INTERNSHIP

3.01 An internship is a course of study in which applicants receive part of their clinical training in a private practice setting under the supervision of a licensed optometrist or ophthalmologist. An active, licensed Optometrist or Ophthalmologist may act as a supervisor. Any applicant's participation in such an internship program must be approved by the Board and is subject to the following terms and conditions:

A. A letter from the practitioner with whom the applicant will be interning stating the goals, duties and the number of hours he/she will be working. If the applicant is not doing his/her internship with a therapeutically certified optometrist or ophthalmologist, he/she must also complete an additional one hundred (100) hours of clinical internship with a therapeutically certified Optometrist, Medical doctor or Osteopathic physician.

B. Each applicant who will be participating in the internship program, must provide the name and address of the supervisor and the dates of the internship for approval by the Board before the internship may begin.

C. A letter must be received by the Board from the supervisor verifying the completion of the internship.

D. For purposes of this Section and 29 Del. C. section 2110, the term "duration" shall be defined as "a period of no less than six (6) months and no greater than the period ending on the date of the next Board meeting following the end of the six (6) month period." No intern may practice on a temporary license beyond the duration of the internship.

3.02 Subject to the approval requirements stated above, a candidate's internship requirements may be satisfied while the candidate is a member of the Armed Forces if he/she:

A. Functions as a fully credentialed therapeutically certified optometric practitioner; and (for purposes of this Section equivalent to the Air Force regulations).

B. Performs his optometric duties on a full-time basis in a completely equipped eye clinic.

3.03 Full-time: minimum of 35 hours per week.

3.04 All ~~supervising optometrists~~ supervisors must

supervise the interns on a one-to-one basis whenever an applicant performs a task which constitutes the practice of optometry. No ~~supervising optometrist~~ supervisor may be a supervisor for more than one intern, or student extern, at a time. Only one intern shall be permitted in any office practice for any period of time.

3.05 All acts which constitute the practice of optometry under 24 **Del.C.** Section 2101(a) may be performed by the intern only under the following conditions:

A. ~~The supervising optometrist~~ A supervisor shall be on the premises and immediately available for supervision at all times;

B. All intern evaluations of any patient shall be reviewed by the supervisor prior to final determination of the patient's case before the patient leaves the premises; and

C. A ~~supervising optometrist~~ supervisor shall at all times effectively supervise and direct the intern.

3.06 A violation of any of the conditions enumerated in this rule may be grounds for the Board to revoke their approval of an internship program. The Board may also revoke its approval of an internship program if it determines that either the supervising optometrist or the intern has engaged in any conduct described by 24 **Del.C.** Section 2113(a). Furthermore, any violation of the terms of this rule by a supervising optometrist who is a licensed optometrist shall be considered unprofessional conduct and a violation of 24 **Del.C.** Section 2113(a)(7).

#### SECTION 4. RECIPROCITY (ENDORSEMENT)

A. The Board shall waive the internship requirement for an applicant holding a valid license to practice optometry, issued by another jurisdiction, and who has practiced for a minimum of five years in such other jurisdiction with standards of licensure which are equal to or greater than those of 24 **Del.C.**, Chapter 21 and grant a license by reciprocity to such applicant. The applicant shall contact the National Practitioner Data Bank requesting that verification be sent to the Board regarding his/her licensure status. In addition, the applicant shall contact each jurisdiction where he/she currently is licensed, or has been previously licensed, or otherwise authorized to practice optometry, and request that a certified statement be provided to the Board stating whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. In addition, the applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of Optometry for the jurisdiction through which he/she is seeking reciprocity.

B. Applicants from jurisdictions which have the same basic qualifications for licensure as this State, but do not

have essentially comparable or higher standards to qualify for 'therapeutic' licensing, shall be required to meet the conditions of subsections (a) and (b), 24 **Del.C.** Section 2108.

C. "Standards" as used in this Section are defined in Sections 6 & 7 of these regulations.

#### SECTION 5. USE OF DIAGNOSTIC DRUGS

5.01 Licensees who have been duly authorized by the Board may, for diagnostic purposes only, make use of the following classes of topical ophthalmic drugs: (1) anesthetics, (2) mydriatics, (3) cycloplegics, and (4) miotics; provided, however, that any such authorization by the Board shall not be construed as authorizing any licensee to dispense or issue a prescription for diagnostic drugs.

5.02 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

5.03 The provisions of Section 5.01 shall not preclude a licensee from using: ancillary diagnostic agents including, but not limited to dyes, schirmer strips, etc.

#### SECTION 6. USE OF THERAPEUTIC DRUGS

6.01 Therapeutically certified optometrist may use and/or prescribe the following pharmaceutical agents for the treatment of ocular diseases and conditions:

A. Topical and oral administration:

- (a) Antihistamines and decongestants
- (b) Antiglaucoma
- (c) Analgesics (non-controlled)
- (d) Antibiotics

B. Topical administration only:

- (a) Autonomics
- (b) Anesthetics
- (c) Anti-infectives, including antivirals and antiparasitics
- (d) Anti-inflammatories

6.02 Authorization by the Board under this regulation shall be evidenced by an appropriate designation on the certificate of registration and license.

#### SECTION 7. MINIMUM STANDARDS OF PRACTICE

A. Equipment

- (a) Acuity chart
- (b) Ophthalmoscope
  - (1) Direct
  - (2) Indirect
- (c) Keratometer
- (d) Biomicroscope
- (e) Tonometer

- (f) Gonioscope
- (g) Access to Visual Field
- (h) Access to Retinal Camera
- (i) Phoropter

B. Examination and Treatment

1. General Examination:

- (a) Case history
- (b) Acuity measure
- (c) Internal tissue health evaluation
- (d) External tissue health evaluation
- (e) Refraction
- (f) Tonometry
- (g) Visual fields (in appropriate cases)
- (h) Retinal photos (in appropriate cases)
- (i) Treatment, recommendations and

directions to the patients, including prescriptions

- (j) Name of attending optometrist

2. During a contact lens examination:

- (a) Assessment of corneal curvature
- (b) Acuity through the lens
- (c) Directions for the care and handling of

lenses and an explanation of the implications of contact lenses with regard to eye health and vision

- (d) Name of attending optometrist
- (e) Assessment of contact lens fit

3. During a follow-up contact lens examination:

- (a) Assessment of fit of lens
- (b) Acuity through the lens
- (c) Name of attending optometrist
- (d) Ocular health assessment

C. A complete record of examinations and treatment shall be kept in a current manner.

## SECTION 8. ETHICS

8.01 It shall be the ideal, the resolve and the duty of all licensees to:

A. Keep the visual welfare of the patient uppermost at all times.

B. Promote in every possible way, better care of the visual needs of mankind.

C. Enhance continuously their educational and technical proficiency to the end that their patients shall receive the benefits of all acknowledged improvements in vision and eye care.

D. See that no person shall lack for visual care, regardless of his financial status.

E. Advise the patient whenever consultation with an optometric colleague or reference for other professional care seems advisable.

F. Hold in professional confidence all information concerning a patient and use such data only for the benefit of the patient.

G. Conduct themselves as exemplary citizens.

H. Maintain their offices and their practices in keeping with current professional standards of care.

I. Promote and maintain cordial and unselfish relations with members of their own profession and other professionals for the exchange of information to the advantage of mankind.

J. Maintain adequate records on each patient for a period of not less than five years from the date of the most recent service rendered.

### 8.02

A. A licensee must honor a patient's request to forward the patient's complete prescription and ophthalmic or contact lens specification to another licensed physician of medicine, osteopath, optometrist, or a nationally registered contact lens technician working under the direct supervision of an optometrist, ophthalmologist or osteopathic physician, if all financial obligations to the licensee have been satisfied. It shall be the obligation of a licensee to tender to a patient upon request his/her final prescription for ophthalmic lenses or contact lens(es) specification, if all financial obligations to the licensee have been satisfied. For purposes of this section, a final prescription or specification results when a patient is released to routine follow-up care. No licensee shall be required to tender a contact lens prescription beyond one (1) year from the date the contact lens(es) were dispensed.

8.03 It shall be considered unlawful for a licensee to delegate to a lay individual, whether an employee or not, any act or duty which would require, on the part of such individual, professional judgment. The fitting of contact lenses, tonometry, refraction, treatment of eye disease, low vision and vision therapy, etc. shall not be so delegated unless under the direct supervision of the licensee.

8.04 No licensee shall do anything inconsistent with the professional standards of the optometric and allied health professions.

8.05 No licensee shall use unethical, misleading or unprofessional advertising methods, including, but not limited to: baiting patients to purchase materials in exchange for free or reduced fees for professional services.

8.06 No licensee when using the doctor title shall qualify it in any other way than by use of the word "optometrist". He/she may, however, when not using the prefix, use after his/her name the "O.D." degree designation, consistent with other provisions of 24 Del.C., Chapter 21.

8.07 No licensee shall practice in or on premises where any materials, other than those necessary to render his professional services, are dispensed to the public.

8.08 No licensee shall locate in a merchandising store or practice his profession among the public as the agent, employee or servant of, or in conjunction with either directly or indirectly, any merchandising firm, corporation, lay firm or unlicensed individual.

8.09 No licensee shall practice his profession in conjunction with, or as an agent or employee of an ophthalmic merchandising business (commonly known as "opticians") either directly or indirectly in any manner. Nor shall any licensee use any name other than the name recorded in the files of the State Board for his optometric registration and licensure.

8.10 Corporations, except those allowed under Chapter 6 of Title 8 of the Delaware Code, lay firms and unlicensed individuals are prohibited from the practice of optometry directly or indirectly and from employing, either directly or indirectly, registered and licensed optometrists to examine the eyes of their patients. Licensees so employed will be considered guilty of unprofessional conduct, and in violation of 24 **Del.C.** Sections 2113(a)(3) and (6).

8.11 No licensee shall hold himself forth in such a way as to carry the slightest intimation of having superior qualifications or being superior to other optometrists, unless he is qualified by a specialty board approved by the State Board.

8.12 No licensee holding an official position in any optometric organization shall use such position for advertising purposes or for self-aggrandizement.

8.13 Since the law states that a certificate must be displayed in every office where the profession of optometry is practiced, and since no certificate for branch offices has previously been issued, the State Board shall issue branch office certificates with the words "Branch Office" thereon emblazoned under the registry number, with the certificate being a duplicate of that originally issued.

8.14 A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

#### SECTION 9. HEARINGS

9.01 All complaints shall be referred to the Division of Professional Regulation for investigation and a contact person from the Board will be appointed at the next meeting.

9.02 Hearings are conducted in accordance with the Administrative Procedures Act.

#### SECTION 10. CONTINUING EDUCATION REQUIREMENTS

All persons licensed to practice Optometry in the State of Delaware shall be required to acquire 12 hours of continuing education every two years. All therapeutic licensed optometrists shall be required to acquire an additional 12 hours of therapeutics and management of ocular disease and keep their CPR certification for both children and adults current. No practice management courses will be accepted.

10.01 These continuing optometric education requirements are necessary for licensure every two years.

10.02 Licensees will be required to comply before May 1 of odd numbered years.

10.03 It shall be the responsibility of the candidate for relicensure to submit to the appropriate State of Delaware agency evidence of his/her compliance with these requirements. The appropriate state agency shall notify the candidate at least 30 days in advance of the need to renew his/her license, and shall request that the candidate submit evidence of compliance with the continuing education requirements stated herein, along with other fees and documents required. Failure to be notified by such agency shall not relieve licensee from this obligation.

#### 10.04

A. Non-therapeutic - Of the 12 hours biennial requirement for non-therapeutic licensees, a maximum of 2 hours may be fulfilled by self-reported study.

B. Therapeutic - Of the 24 hours biennial requirement for therapeutic licensees, a maximum of 4 hours may be fulfilled by self-reported study.

C. Self-reported study may include:

- a. Reading of Optometric journals
- b. Optometric tape journals
- c. Optometric audiovisual material
- d. Other materials given prior approval by the

Board.

Proof of completion from the sponsoring agency is required for credit.

10.05 Any new licensee shall be required to complete continuing education equivalent to one hour for each month between the date of licensure and the biennial renewal date. The first twelve (12) hours of pro-rated continuing education must be in the treatment and management of ocular disease.

10.06 Continuing Education courses given by the following organizations will receive credit.

Meetings of (Scientific Session Portion Only)

- a. American Optometric Association
- b. Delaware Optometric Association
- c. American Academy of Optometry
- d. Recognized state regional or national optometric societies
- e. Schools and colleges of Optometry
- f. Meetings of other organizations as may be approved by the Board.
- g. COPE approved courses (with the exception of Practice Management courses)

#### 10.07 Failure to Comply

When the State Board of Examiners in Optometry deems someone to be deficient in continuing education requirements, the license will be revoked. In the event that any optometrist licensed in this State fails to meet continuing education requirements, his or her license shall be revoked, except when proven hardship makes compliance impossible. The Board shall reinstate such license upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

#### 10.08 Licensure--Renewal

A. All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

B. Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee in addition to the prescribed renewal fee.

C. Any licensee who intends not to renew his/her license because he/she retired from practice or has ceased practice in the State of Delaware, shall so indicate such reason(s) on the renewal application. Failure to do so will result in the Board taking mandatory action to revoke the license.

#### Exemptions

An exemption may be granted to any optometrist who can demonstrate to the Board an acceptable cause as to why he/she should be relieved of this obligation. Exemptions will be granted only in unusual or extraordinary circumstances. Licensees must petition the Board for exemptions. Should the Board deny the request, the licensee must complete the requirements. Examples of circumstances for which the Board might grant exemptions include prolonged illness,

extended absence from the country, etc.

#### SECTION 11. THERAPEUTIC CERTIFICATION

11.01 The examination identified in 24 **Del.C.** Section 2108(b) is the national examination administered by the National Board of Examiners in Optometry (formerly the International Association of Boards of Examiners in Optometry) for treatment and management of ocular disease. A copy of the certificate representing passage of the examination must be submitted with the application for therapeutic licensure.

11.02 All applicants for therapeutic licensure must be CPR certified for both children and adults. All optometrists must keep their CPR certification for both children and adults current.

11.03 For applicants currently licensed in Delaware, 40 hours of treatment and management of ocular disease training may be accumulated with a therapeutically certified optometrist, a medical doctor, or an osteopathic doctor. Proof of 40 hours of treatment and management of ocular disease training must be submitted by letter. If an applicant's supervisor is a therapeutically certified optometrist in a state other than Delaware, proof of similar licensing requirements in the other state must be submitted.

11.04 Applicants must have completed their forty (40) hours of clinical experience within twenty-four (24) months of their initial application for therapeutic licensure.

11.05 The same reciprocity rules apply for therapeutic licensing as for other optometry licensing.

11.06 All newly licensed optometrists shall be required to be therapeutically certified. Their six month internship should be done with a therapeutically certified optometrist, M.D. or D.O. However, if a therapeutically certified optometrist, M.D. or D.O. is not available, the intern may do an internship with a non-therapeutically certified optometrist provided, the intern complete an additional 100 hours of clinical experience in the treatment and management of ocular disease, supervised by a therapeutically certified optometrist, M.D. or D.O. during their internship.

11.07 For applicants not currently licensed in Delaware (Refer to Reciprocity).

#### SECTION 12. UNPROFESSIONAL CONDUCT

A violation of any of the provisions of these regulations will be considered to be unprofessional conduct.

**RULE 3.04, AS PUBLISHED IN THE REGISTER OF APRIL 1, 1998, INCLUDED A TYPOGRAPHICAL ERROR THAT INADVERTENTLY DELETED THE REFERENCE TO A STUDENT EXTERN. THE RULE AS ADOPTED BY THE BOARD AND PRINTED HEREIN CORRECTS THIS OMISSION.**

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF EXAMINERS OF  
PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code,  
Section 3506(a)(1) (24 **Del.C.** 3506(a)(1))

BEFORE THE BOARD OF EXAMINERS OF  
PSYCHOLOGISTS OF THE STATE OF DELAWARE

IN RE: ADOPTION OF RULES AND REGULATIONS

ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 8<sup>th</sup> day of June, 1998, in accordance with 29 *Del.C.* §10118 and for the reasons stated hereinafter, the Board of Examiners of Psychologists of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

Upon due notice and pursuant to its authority under 24 *Del.C.* §3506, the Board proposed new Rules and Regulations to replace its existing rules and regulations.<sup>1</sup> The Board's proposal was in part a response to extensive statutory changes to the Board's enabling statute<sup>2</sup> in 1995. The public hearing on the Board's proposal was scheduled for March 9, 1998. Notice of the hearing was published in the Delaware Register of Regulations at 1:8 *Del.R.* 1009, (February 1, 1998) and in two Delaware newspapers of general circulation, all in accordance with 29 *Del.C.* §10115 (a copy of the Notice of Public Hearing is attached hereto as Exhibit 1). The public hearing was held as noticed on March 9, 1998.

Evidence and Information Submitted at Public Hearing

The Board received seven written comments in response to the notice of its intention to revise the Rules and Regulations. The Board received several more comments at the public hearing. A summary of the comments follows.

1. Dr. Peter Lamb submitted a written comment on proposed Section 5, "Procedures for Licensure," expressing concern that requiring a passing score on the Examination for the Professional Practice of Psychology (EPPP) would impose a hardship on competent psychologists who have been in practice many years, but have not taken the EPPP because it was not previously required for licensure.

2. Dr. Kathleen Nichols, in written and oral comment, requested that the Board reconsider proposed Section 6, "Evaluation of Credentials," to either clarify the passing score for the EPPP or specify the basis for determining the passing score, taking into account the scores required by neighboring states.

3. Dr. Roger Kobak, Director of Clinical Training at the University of Delaware, submitted both written and oral comment concerning Section 7, "Supervised Experience." Dr. Kobak noted that the statutory requirement of two years of supervised, postdoctoral experience<sup>3</sup> is double that of many jurisdictions and imposes a hardship on recent graduates, particularly since many insurers do not cover services provided under supervision. To ameliorate this effect and offer graduates more flexibility, Dr. Kobak requests the Board revise its proposed regulation by removing the time frames within which the postdoctoral experience must be completed.

4. Dr. Lawrence H. Cohen, Associate Chair of Psychology at the University of Delaware, was also concerned about proposed Section 7. Dr. Cohen recommended that the Board count clinical supervision of graduate students towards the required three-thousand hours of supervised, postdoctoral experience. This change would recognize the duties and burdens on academic clinical psychologists while fulfilling the statutory mandate of postdoctoral experience.

5. Dr. Doris Lauckner, a psychologist from the Stockley Center, presented the concerns of the Division of Mental Retardation about proposed Section 9, "Psychological Assistants."<sup>4</sup> Dr. Lauckner requests the Board expand the number of psychological assistants that a licensed psychologist can supervise and allow some of the supervision to occur within a group setting, noting the hardship the proposed regulation imposes on state agencies in particular.

6. Beth A. Dewson submitted a written comment suggesting that the new regulations should require newspaper publication of the Board's decisions in disciplinary proceedings as a means of notifying and protecting the public.

7. Dr. Tim Travis, a psychologist in private practice, noted that there may be a discrepancy between proposed Section 13, "License Renewal," and Section 10, "Continuing Education," in that a licensee could be permitted until August

31 of a renewal year to complete their renewal qualifications, but be considered to be practicing without a license after July 31.

8. Dr. Robert F. Simons, Professor of Psychology at the University of Delaware, reviewed the history of the 1995 legislative changes, particularly the concerns of the academic community that qualifications for licensure should reflect and follow the anticipated practice activity. Dr. Simons reminded the Board of discussions on this topic that occurred between the Board, the academic faculty and legislators at the time of the statutory revisions. Dr. Simons requested that proposed Section 14, addressing licensure of faculty members, be changed to include the hours spent supervising graduate students toward the required hours of direct service and to remove the requirements that faculty register with the Board and submit registration plans. Dr. Cohen joined Dr. Simons in these concerns, as did Rick Armitage, Director of Government Relations at the University of Delaware.

9. Dr. Mary Dozier, Associate Professor of Psychology at the University of Delaware, submitted a written comment confirming the history of the legislative changes outlined by Dr. Simons.

#### Findings of Fact and Conclusions

The public was given appropriate notice of the Board's intention to comprehensively revise its regulations and an opportunity to provide the Board with comments on the proposed changes. The Board concludes that its consideration of the proposed Rules and Regulations is within the Board's authority under 24 *Del.C.* §3506. The Board has carefully considered the comments received from the public in reaching the following factual findings and conclusions.

##### A. Regulations Adopted.

No public comment was received with respect to proposed Sections 1, 2, 3, 4, 8 and 11, the exact text of which is attached hereto as Exhibit 2. The Board concludes that these regulations are necessary for the enforcement of 24 *Del.C.* chapter 35 and for the full and effective performance of the Board's duties under that chapter. The Board also finds that adopting proposed Sections 1, 2, 3, 4, 8 and 11 is in the interests of the citizens of the State of Delaware and is necessary to protect the general public and to regulate and oversee the practice of psychology. The Board, therefore, adopts proposed regulations Sections 1, 2, 3, 4, 8 and 11 as set forth in Exhibit 2.

The Board has considered the comments received from Dr. Lamb concerning proposed Section 5, but notes that 24 *Del.C.* §3511 requires a passing score on the EPPP for licensure and makes no provision which would allow the

Board to waive this requirement for applicants with extensive experience. The Board finds that the rule as proposed is necessary to implement and clarify 24 *Del.C.* §3511 and is in the public's interest in that it helps assure competency in licensure. Accordingly, the Board adopts Section 5 as proposed, the text of which is included at Exhibit 2.

The Board also adopts proposed Sections 10 and 13, the text of which is included at Exhibit 2, finding no inconsistency between the regulations and concluding that they effectively implement the process for license renewal, including a continuing education component. The Board notes that the Administrative Procedures Act, at 29 *Del.C.* §10133, specifically protects the status of licensees who have made timely, proper applications for renewal in compliance with the law and the Board's regulations, and that proposed Section 13 specifically references Section 10.

The Board also adopts proposed Section 12, as included in Exhibit 2, finding that there is already a sufficient public disciplinary process in place and that newspaper publication of each disciplinary order would not significantly advance the public safety. The Board notes that all disciplinary matters are heard in open meeting, and that the status of any practitioner's license is available to the public through the Division of Professional Regulation. Finally, the Board notes that it has the ability in each disciplinary case to require additional public notification and finds that the rule as proposed allows the Board to decide whether this is necessary in an individual case based on the severity and nature of the conduct.

##### B. Regulations Rejected.

The Board has considered the public comments received with regard to proposed Section 6 and finds that the proposed rule properly implements the mandate of 24 *Del.C.* §3508(a)(3) that the passing EPPP score is the one established by the Association of State and Provincial Psychology Boards. The Board, however, finds that the rule as proposed should be revised to better describe the core curriculum necessary to the doctoral program required by 24 *Del.C.* §3508(a)(1). Therefore, the Board declines to adopt proposed Section 6.

Likewise, the Board declines to adopt proposed Section 9. 24 *Del.C.* §3509(c) requires the Board to regulate the ratio of psychological assistants to supervising psychologist, and to establish the terms of the supervision. The Board finds, however, that the present proposal may impose unnecessarily burdensome requirements on some organizations and agencies and that there are less onerous ways to assure that psychological assistants receive adequate supervision. The Board plans to revise Section 9 to address these findings.

Finally, the Board declines to adopt either proposed Sections 7 or 14. The Board continues to believe that its regulations should develop standards for the type of work

that satisfies the postdoctoral experience requirement and remains concerned that the postdoctoral hours be accumulated in time frames that allow an applicant's professional identity to develop, yet are concentrated enough to be an effective learning experience. However, the Board has seriously considered the comments received from the faculty and administration of the University of Delaware and believes that these comments merit the Board reconsidering proposed Regulations 7 and 14.

#### ORDER

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Examiners of Psychologists, IT IS HEREBY ORDERED THAT:

1. Proposed Rules and Regulations, Sections 1, 2, 3, 4, 5, 8, 10, 11, 12 and 13 are *approved and adopted* in the exact text attached hereto as Exhibit 2. These Sections replace in their entirety the corresponding sections of the Board's Rules and Regulations adopted on December 13, 1993 and any changes subsequent thereto.
2. The Board *declines to adopt* proposed Sections 6, 7, 9 and 14. The existing Rules and Regulations corresponding to these sections remain in effect.
3. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 *Del.C.* §10118(e).
4. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

<sup>1</sup> The Board's immediately prior Rules and Regulations were effective December 13, 1993.

<sup>2</sup> 24 *Del.C.* chapter 35.

<sup>3</sup> 24 *Del.C.* §3508(a)(2).

<sup>4</sup> *Dr. Joseph B. Keyes*, Director of Professional Services for the Division of Mental Retardation, joined *Dr. Lauckner* in the Division's written comments.

#### BEFORE THE BOARD OF EXAMINERS OF PSYCHOLOGISTS OF THE STATE OF DELAWARE

IN RE: ADOPTION OF RULES AND REGULATIONS

BY ORDER OF THE BOARD OF EXAMINERS OF  
PSYCHOLOGISTS:

Jane Gilbert, Ph.D., President  
Jane Crowley, Psy.D., Vice-President  
Kulendu Bole, Secretary

David Lindemer, Ph.D.  
Bobby Benjamin, Public Member  
Shirley Reichelt, Public Member  
John Starke, Public Member

#### EXHIBIT 2

#### FINAL RULES AND REGULATIONS

#### SECTION 01 - GENERAL RULES AND REGULATIONS

The Board of Examiners of Psychologists has been established under the Delaware law, Title 24, Chapter 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, Del. C. , Title 29, Chapter 101.

#### SECTION 02 - OFFICIAL BOARD OFFICE

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

#### SECTION 03 - MEETINGS OF THE BOARD

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

#### SECTION 04 - OFFICERS OF THE BOARD

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the

President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

#### SECTION 05 - PROCEDURES FOR LICENSURE

##### APPLICATION - INITIAL LICENSURE

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 Del. C. Section 3508. The applicant must submit the following:

1. An application for licensure, which shall include:
  - a) Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 Del. C. Section 3508(a)(1).
  - b) Supervised experience documented by having each supervisor complete a Supervisory Reference Form.
  - c) Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB at the time of the application for licensure. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware.
  - d) Verification that the applicant has no past or pending disciplinary proceedings. [24 Del. C. Section 3508(a)(4)] The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.
2. Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

##### APPLICATION - BY RECIPROCITY

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 Del. C. Section 3511, shall submit evidence that he/she meets the following requirements:

1. An application for licensure, which shall include:
  - a) Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.
  - b) Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP) by achieving the passing score, as required by their state of original licensure.
2. Completed certification form. The applicant will be notified once his/her application is complete and available

for the Board's review. The certification form must be submitted before any further action can be taken.

#### ~~SECTION 06 - EVALUATION OF CREDENTIALS~~

~~[Candidates for licensure as psychologists in the State of Delaware shall:~~

- ~~1. Have received a doctoral degree based on a program of studies, which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 Del. C. Section 3508(a)(1), having a graduate program which states its purpose to be the training and preparation of psychologists. Candidates holding degrees from programs outside the United States or its territories are responsible for providing verification from an agency recognized by the Board that their training and degree are equivalent to US accredited programs; and~~
- ~~2. Have had, after receiving the doctoral degree, at least 2 years of supervised professional experience in psychological work satisfactory to the Board; and~~
- ~~3. Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB), or its successor, or~~
- ~~4. The Board will qualify for licensing without examination any person who applied for licensure and who is a diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.~~

#### SECTION 07 - SUPERVISED EXPERIENCE

~~The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant comprises of three types of supervisory experiences:~~

- ~~1. Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.~~
- ~~2. Postdoctoral supervision is required for initial licensure as a psychologist. Post doctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years and not more than three calendar years, save for those covered under Section 3519(e). For those individuals the accrual of 3,000 hours of supervised postdoctoral experience must take place within six~~

calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

3. Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations.

A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions.

A supervising psychologist of the postdoctoral experience of psychological assistant must provide 24 hour availability to both supervisee and the supervisee's clients, or adequate coverage is provided in supervisor's absence.

This supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary.

The supervising psychologist must be employed or under contract in the setting where the clinical service takes place and that the supervision must occur within that setting.]

#### SECTION 08 - FAILURE TO PASS EXAMINATION

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

#### [SECTION 09 - PSYCHOLOGICAL ASSISTANTS

A psychological assistant is an individual who meets the requirements of 24 Del. C. Section 3509(2a-2c). Psychological assistants are supervised, directed, and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided. Any Delaware licensed psychologist who has had at least two (2) years of experience following the granting of the licensure in this or in any other state may supervise a maximum of two (2) full-time psychological assistants or their part-time equivalents. Full time is defined as twenty (20) hours of direct clinical service per week. The total number of clinical hours that the Delaware licensed psychologist may supervise is forty (40) per week divided among no more than four (4) psychological assistants. The maximum number of clinical hours delivered by a psychological

assistant is limited to twenty (20) per week under any one supervising psychologist. It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart. The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychologist assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 Del. C. Section 3509 (b1- b3).

The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expire biennially and continued performance of the duties of a

psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning.

Psychological assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full-time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant who provides services that are under the direction of different psychologists, must register as a psychological assistant with all of the psychologists who are directly

supervising the clinical work.

When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the privilege of hiring a psychological assistant.

Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify if the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.]

#### SECTION 10 - CONTINUING EDUCATION

1. Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that he/she may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

2. Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

3. Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed, to reapply for licensure or registration, until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal, but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

4. It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

5. The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

6. Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

a. Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives, [~~faculty and educational objectives~~]. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in the training.

b. Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

c. Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credit. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

d. Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

e. Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

1) Author of a book (maximum of 40 CE hours)

2) Author of a book chapter or journal article (maximum of 15 CE hours)

3) Editor of a book (maximum of 25 CE hours)

4) Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

Proof of the above must include the submission of the work or documentation of authorship by copy of title pages.

f. Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific or professional organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

7. The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

8. The following will not be considered for credit: service to organizations; attending business meetings of professional organizations; business management or office administration courses; group supervision; or case conferences.

## SECTION 11 - PROFESSIONAL CONDUCT

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 Del. C. Section 3514.

## SECTION 12 - COMPLAINT PROCEDURES

Complaints against psychologists and psychological assistants will be investigated as provided by 29 Del. C. Section 8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 Del. C. Chapter 101.

Complaints must be filed, in writing, with the Division of Professional Regulation.

## SECTION 13 - LICENSE RENEWAL

Renewal notices will be mailed in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. Continuing education requirements must be fulfilled as detailed in Section 10 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. Should any psychologist fail to renew and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew and continue to make representation as a registered psychological assistant beyond July 31st, that individual is

considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

~~[SECTION 14 - PROCEDURES FOR LICENSURE APPLICABLE TO FULL-TIME FACULTY MEMBERS IN A NATIONALLY ACCREDITED DOCTORAL LEVEL CLINICAL TRAINING PROGRAM IN THE STATE OF DELAWARE~~

~~University faculty employed full-time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 Del. C. Section 3519(e), who are not licensed, are subject to the following rules and regulations:~~

~~1. **Active Pursuit of Licensure.** Such individuals are required to be in active pursuit of licensure for a period not to exceed six years.~~

~~2. **Professional Activities.** These individuals may participate in and may supervise matriculated graduate students in activities defined as the practice of psychology within the context of a clinical training program, and may conduct any research and teaching activities related to the activities of such a program.~~

~~3. **Registration.** Such individuals must register with the Board of Examiners of Psychologists no later than thirty days after the commencement of employment, indicating employer, position, and dates.~~

~~The six-year time frame for the completion of licensure requirements commences with the initial date of employment.~~

~~The six-year time frame for individuals employed as of June 12, 1995, commenced on this date. These individuals must register with the Board no later than thirty days after the enactment of these Rules and Regulations.~~

~~4. **Education.** Such individuals must have completed the doctoral degree at the time employment commences, to be considered eligible to perform the duties, as outlined in 24 Del. C. Section 3519(e).~~

~~5. **Supervision.** Such individuals must register a supervision plan with the Board of Examiners of Psychologists which includes the nature of work and the name of the supervisor. His/her plan must be acceptable to the Board, as outlined in Section 07 of the Rules and Regulations, if not, the plan must be revised accordingly. An affidavit signed by the supervisor must be submitted in fulfillment of requirements for licensure.]~~

## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

### BEFORE THE DEPARTMENT OF EDUCATION OF THE STATE OF DELAWARE REGULATORY IMPLEMENTING ORDER COOPERATIVE EDUCATION PROGRAM

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education to amend the regulations entitled Cooperative Education, page E-5, Section V.D.2.a. and b. and Credit for Vocational-Technical Courses, pages E-6 and E-7, Section V.E. Both of these existing regulations address the same topic, Cooperative Education Programs. The amended regulation combines the regulatory elements of both sections and adds the word "shall" to the statements to be clear that these are required elements. Because the amended regulation now takes a stronger position on the requirements for Cooperative Education Programs the amended regulation will not take effect until the 1999-2000 school year to allow the districts to make the necessary adjustments.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 15, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received as a result of the newspaper advertisements. However, the Advisory Council on Career and Vocational Education raised some questions concerning policy and through discussion with Department of Education staff their concerns have been addressed.

#### II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend these regulations because these regulations need to define specifically what elements must be present in the program in order for local districts to secure vocational-technical education funding units.

#### III. DECISION TO AMEND THE REGULATIONS

For the foregoing reasons, the Secretary concludes that the proposed amendments are necessary. Therefore, pursuant to 14 Del. C., Sec. 122, the amended regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulations hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the amended regulations adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the document entitled Regulations of the Department of Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Sec. 122, in open session at the said Board's regularly scheduled meeting on June 18, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 18th day of June, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 18th day of June, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

### EXHIBIT B AS AMENDED COOPERATIVE EDUCATION

1. Cooperative Education provides senior Vocational-Technical students with coordinated on-the-job training not ordinarily available in the classroom. During the student's senior year, employers may provide this on-the-job training in occupations directly related to the vocational-technical education program in which the student is enrolled. For the purpose of granting credit during the school year two hours of cooperative work experience shall equal one hour of instructional time. In a summer cooperative education work experience program one half unit of credit shall be granted and shall be counted toward the units of credit necessary for graduation.

2. In order to qualify for Vocational-Technical Education funding units beginning with the 1999-2000 school year:

a. A vocational-technical education teacher or career

guidance counselor shall be provided with a full class period, each day, for every fifteen (15) students enrolled in the program in order to make quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

b. Students shall possess minimum occupational competencies specified by the vocational-technical teacher coordinator before being placed in cooperative employment.

c. Students shall be in their senior year.

d. The cooperative work experience shall relate directly to the student's current or completed vocational-technical education program and be supervised through on site visits by an assigned vocational-technical teacher coordinator or career guidance counselor.

e. The school shall have on file, for each student:

(1) a training agreement signed by a parent or guardian, the employer, the student and a representative of the district.

(2) a State Work Permit for Minors (ages 14-17) signed by the parent or guardian, the employer, and the issuing school officer before employment begins.

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### REGULATORY IMPLEMENTING ORDER DIVERSIFIED OCCUPATIONS PROGRAMS

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education to adopt regulations for Diversified Occupations Programs. Diversified Occupations Programs have been in existence for many years and have been eligible for State Vocational-Technical Education funding units but the programs have never had any specific regulations. The program is similar to the Cooperative Education Program and the regulations have been developed to reflect the similarity. The major differences in the regulations are the type of work experience required and the years when students can participate. Because the regulations now take a stronger position than is evident in actual practice, the regulation will not take effect until the 1999-2000 school year to allow the districts to make the necessary adjustments.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 15, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received as a result of the newspaper advertisements. However, the Advisory Council on Career and Vocational Education raised some questions concerning policy and through discussion with Department of Education staff their concerns have been addressed.

## II. FINDINGS OF FACT

The Secretary finds that it is necessary to adopt these regulations because we must define specifically what elements must be present in the program in order for local districts to secure vocational-technical education funding.

## III. DECISION TO ADOPT REGULATIONS

For the foregoing reasons, the Secretary concludes that the proposed regulations are necessary. Therefore, pursuant to 14 Del. C., Sec. 122, the regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in the document entitled Regulations of the Department of Education.

## IV. TEXT AND CITATION

The text of the regulations adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in Section V. of the Handbook for K-12 Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Sec. 122, in open session at the said Board's regularly scheduled meeting on June 18, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 18th day of June, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 18th day of June, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## EXHIBIT B

## DIVERSIFIED OCCUPATIONS PROGRAMS

1. Diversified Occupations Programs provides students with coordinated on-the-job training not ordinarily available in the classroom. During the student's junior and senior year, employers provide this on-the-job training. For the purpose of granting credit during the school year, two hours of work experience shall equal one hour of instructional time. In a summer Diversified Occupations work experience program one half unit of credit shall be granted and that credit shall be counted toward the units of credit necessary for graduation.

2. In order to qualify for Vocational-Technical Education funding units beginning with the 1999-2000 school year:

a. A vocational-technical education teacher or career guidance counselor shall be provided with a full class period, each day, for every ~~thirty (30)~~ **[fifteen (15)]** students enrolled in the program in order to make quarterly visits to the student's place of employment to ensure coordination between the classroom and the on-the-job experience.

b. Students shall possess minimum **[readiness]** competencies as specified by the teacher coordinator before being placed in a diversified occupations employment situation.

c. Students shall be in their junior or senior year and be actively enrolled in a Diversified Occupations Program.

d. The Diversified Occupations work experience shall be supervised through on-site visits by the teacher coordinator **[or career guidance counselor]**.

e. The school shall have on file, for each student:  
(1) a training agreement signed by a parent or guardian, the employer, the student and ~~the teacher~~ **[a representative of the district]**.

(2) a State Work Permit for Minors (ages 14-17) signed by the student's parent or guardian, employer and issuing school officer before employment begins.

**REGULATORY IMPLEMENTING ORDER  
STUDENT RIGHTS AND RESPONSIBILITIES**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The Secretary seeks the consent of the State Board of Education to amend the Regulation, Student Rights and Responsibilities, page A-2, I.B.4, in the Handbook for K-12 Education. The regulation requires the local school districts to establish their own policies on student rights and responsibilities and to base the policies on the Department of Education document Guidelines for the Development of District Policies on Student Rights and Responsibilities and on the Policy for School Districts on the Possession, Use

or Distribution of Drugs and Alcohol. The amendment changes the word “must” to “shall”, changes the word “Guidelines” to the words “Technical Assistance” in the title of the DOE document, Guidelines for the Development of District Policies on Student Rights and Responsibilities, and adds the policy, School District Compliance with the Gun Free School Act to the list for school districts to use as references. The regulation is also amended to add that the school district “shall” distribute these policies to every student in the school district every year.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 15, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received as a result of the newspaper advertisements.

## II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend this regulation because the wording needed clarification and it is important to regulate the fact that the local school districts shall notify all students every year of the local district’s policies concerning student rights and responsibilities.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that the proposed amendment is necessary. Therefore, pursuant to 14 Del. C., Sec. 122, the amended regulation attached hereto as Exhibit B is hereby adopted. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in the document entitled Regulations of the Department of Education.

## IV. TEXT AND CITATION

The text of the amended regulation adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in section I of the Handbook for K-12 Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Sec. 122, in open session at the said Board’s regularly scheduled meeting on June 18, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 18th day of June, 1998.

## STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## EXHIBIT B AS AMENDED

### STUDENT RIGHTS AND RESPONSIBILITIES

All local school districts shall have their own policies on student rights and responsibilities and shall distribute [and explain] these policies to every student in the school district at the beginning of every school year. The local district’s policies shall be based on the Technical Assistance Manual for the Development of District Policies on Student Rights and Responsibilities and on the Department of Education Regulations, Policy for School Districts on the Possession, Use or Distribution of Drugs and Alcohol, and School District Compliance with the Gun Free Schools Act.

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## REGULATORY IMPLEMENTING ORDER

### AMENDMENTS TO THE CONSTITUTION AND BYLAWS OF THE DELAWARE SECONDARY SCHOOL ATHLETIC ASSOCIATION (DSSAA)

## I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary seeks the approval of the State Board of Education in adopting these recommended changes and revisions to the Constitution and Bylaws. The attached proposals are the result of an annual review of the Constitution and Bylaws of the Delaware Secondary School Athletic Association (DSSAA) by the DSSAA Constitution and Bylaws Committee and the DSSAA Board of Directors. Approximately two-thirds of the proposals are editorial changes or minor changes that received no opposition from member school representatives at the 53rd Annual Membership Meeting. The proposed revisions were submitted to the DSSAA Constitution and Bylaws Committee by either a member school, a conference, or the Executive Director. They were discussed at length by the Committee on November 4, 1997, and then submitted to the DSSAA Board of Directors for initial review at the November 20, 1997 meeting. One of the proposals was rejected by the

Board and the remainder were approved. The proposals that received initial approval from the Board were forwarded to the member schools with an invitation to either attend the 53rd Annual Membership Meeting and participate in an open discussion of the proposed revisions or to submit written comments regarding the proposed changes. The entire package of proposals was presented to the member school representatives in attendance for their consideration and comment. At the regularly scheduled DSSAA Board meeting following the Annual Membership Meeting, all of the proposed changes, with the exception of five proposals, received a second affirmative vote. One of the aforementioned five proposals was rejected and the other four were remanded back to the Constitution and Bylaws Committee for further review and revision. Those four proposals were then forwarded to the member schools for written comment and a second vote was taken at the March 26, 1998 DSSAA Board meeting. All four proposals were approved and the twenty-seven proposed changes which received two affirmative votes from the DSSAA Board were forwarded to the Secretary for approval and for the approval of the State Board of Education.

Changes to the bylaws which are more than word changes include:

- A revised statement about the organization reflecting DOE regulations and revised organizational objectives.
- The inclusion of additional persons who are subject to the Sportsmanship rule and expanded authority for the Executive Director to discipline violators.
- A clarification of eligibility for shared time students, choice students, students who are absent or drop out, students changing their residences, students in Intensive Learning Centers and foreign exchange students.
- A clarification of passing work for seniors.
- A revised definition of Junior High School/Middle School and a revised statement on athletic participation for students in this age group.
- An addition to the Wrestling Weight Control Code.
- A change in the definition of a scrimmage.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 15, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received as a result of the newspaper advertisement.

## II. FINDINGS OF FACT

The Secretary finds that it is necessary to amend these bylaws because these changes are reasonable and practicable and will clarify DSSAA's relationship to the Secretary and the State Board, improve the sportsmanship rule, clarify

eligibility for certain classes of students, define more clearly passing work for seniors, revise the definition of junior high/middle level sports programs and change the definition of a scrimmage.

## III. DECISION TO AMEND THESE REGULATIONS

For the foregoing reasons, the Secretary concludes that the proposed amendments are necessary. Therefore, pursuant to 14 Del. C., Sec. 122, the amended bylaws attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended bylaws hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. TEXT AND CITATION

The text of the regulations adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the DSSAA Annual Official Handbook.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Sec. 122, in open session at the said Board's regularly scheduled meeting on June 18, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 18th day of June, 1998.

DEPARTMENT OF EDUCATION  
Dr. Iris T. Metts, Secretary of Education

Approved this 18th day of June, 1998.

STATE BOARD OF EDUCATION  
Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

**\* DUE TO THE FACT THAT NO CHANGES WERE MADE FOLLOWING THE COMMENT PERIOD THE PROPOSED REGULATORY CHANGES ARE NOT REPRINTED HERE.**

**DEPARTMENT OF FINANCE**

**DIVISION OF REVENUE**

**OFFICE OF THE STATE LOTTERY**

Statutory Authority: 29 Delaware Code,  
Section 4805(a) (29 Del.C. 4805(a))

ORDER

Pursuant to 29 Del. C. §4805(a), the Delaware State Lottery Office hereby issues this Order regarding proposed amendments to the existing Video Lottery Regulations. The Lottery proposed to the sections 2.0, 3.1(1)(3)(6), 3.8(2)(9), 3.12, 3.13, 4.2(2)(5)(7), 4.9(2)(5), 5.1, 5.11(13), 6.34, 7.2, 7.3, 7.6, 7.8, 7.9, 8.5, 13.1(3), 13.12, 13.13, 13.14 of the Video Lottery Regulations. The vast majority of these proposed amendments were required by recent legislation, 71 Del. Laws chapter 253, which amended the Lottery chapter, 29 Del. C. chapter 48. Following notice and a request for public comments, the Lottery makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION  
SUBMITTED

1. The Lottery posted public notice of the proposed Amended Regulations in the Register of Regulations and in the News Journal and Delaware State News. The Lottery conducted a public hearing on May 20, 1998 at which time no public comments were made. The Lottery received no written comments on the proposed amendments during the month of May, 1998.

FINDINGS OF FACT

2. The public was given notice and an opportunity to provide the Lottery with comments in writing on the proposed Regulations.

3. The proposed Regulations were promulgated by the Lottery Office in accord with its statutory duties and authority as set forth in 29 Del. C. section 4805(a). Most of the proposed amendments simply track update the existing Video Lottery Regulations to be consistent with the recently enacted legislation. The remainder of the regulations are necessary for the Lottery to operate consistent with its statutory mandate under section 4805(a). The Lottery deems the proposed Regulations necessary for the effective enforcement of 29 Del. C. section 4805 and for the full and efficient performance of the Lottery's duties thereunder. The Lottery concludes that the adoption of the proposed Regulations would be in the best interests of the citizens of the State of Delaware and consonant with the dignity of the State and the general welfare of the people under section

4805(a).

4. The Lottery adopts the proposed Amended Regulations pursuant to 29 Del. C. section 4805 and 29 Del. C. section 10118. A copy of the adopted regulations are attached as exhibit and incorporated as part of this Order.

5. The effective date of this Order shall be ten (10) days from the date of publication of this Order in the Register of Regulations on July 1, 1998.

It is so ordered this 1st day of June, 1998.

Wayne Lemons  
Director  
Delaware State Lottery Office

“Exhibit #1”

**2.0 Definitions**

The following words shall be accorded these meanings:

“video lottery operations employee” - an individual employee, person or agent of an applicant or licensee who is responsible for the security of video lottery machines, or responsible for handling video lottery machine proceeds, or is otherwise employed in a position that allows direct access to the internal workings of video lottery machines.

**3.0 Licensing of Agents; Business Plans**

3.1. Any applicant desiring to obtain a license to act as an agent shall apply to the agency on forms specified by the Director from time to time. Application forms shall require the applicant to provide the following, without limitation:

(1) The applicant's legal name, form of entity (e.g., general or limited partnership, corporation), the names, addresses, employer identification or social security numbers (if applicable) and dates of birth (if applicable) of its directors, officers, partners, owners, ~~and~~ key employees, and video lottery operations employees.

(3) With respect to any persons named in subparagraph (1) that are not individuals, the names, addresses, social security numbers, and birth dates of all individuals who are directors, officers, owners, partners, ~~or~~ key employees, or video lottery operations employees of any such persons.

(6) The names, if any, and addresses, social security numbers, and dates of birth of any person who is or was a director, officer, owner, partner, ~~or~~ key employee, or video lottery operations employee of the applicant who has been ~~or was~~ charged with or convicted of a felony, a crime involving gambling, or a crime of moral turpitude.

3.8 The Director shall weigh the following factors in his or her evaluation of the application:

(2) The criminal background, if any, of the applicant, or any of its officers, directors, partners, owners, ~~and~~ key employees, and video lottery operations employees. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within 10 years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

(9) Whether the person, or any of its officers, directors, partners, owners, ~~or~~ key employees, or video lottery operations employees are known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the Lottery.

~~3.12 At least 180 days prior to the expiration of any license, the agent may apply for renewal of such license. The renewal application, if complete, shall be deemed approved if not acted upon by the agency within 100 days of its receipt.~~

3.13 If the Director proposes to deny a license application ~~or application for renewal of the license~~ and the agency is subject to the requirements contained in subchapter IV of 29 Del. C. chapter 101, the agency shall first give written notice to the applicant or licensee of the intended action, the reasons therefor, and the right to a hearing as provided for in 29 Del. C. chapter 101.

#### 4.0 Licensing of Technology Providers

4.2 Each person desiring to obtain a license from the agency as a technology provider for video lottery games shall submit a license application on a form specified and supplied by the agency. The license application shall, among other things:

(2) Require the applicant to supply specified information and documents related to the applicant's fitness and the background of its owners, partners, directors, officers, key employees, and video lottery operations employees, including but not limited to copies of financial statements, tax returns, insurance policies, and lists of creditors.

(5) Require the applicant to disclose whether the applicant, or any of its present or former officers, directors, owners, partners, ~~or~~ key employees, or video lottery operations employees, is or has been the subject of an investigation in another jurisdiction, the nature of the investigation, and the outcome, if any, of such investigation.

(7) Require the applicant to disclose its legal name, form of entity (e.g., general or limited partnership, corporation), the names, addresses, social security numbers and dates of birth of its directors, officers, partners, owners, ~~and~~ key employees, and video lottery operations employees.

4.9. In evaluating applications, the Director shall consider:

(2) Any past conduct of the applicant, or any of its present or former officers, directors, partners, owners, ~~or~~ key employees, or video lottery operations employees which may adversely reflect upon the applicant, the nature of the conduct, the time that has passed since the conduct, the frequency of the conduct and any extenuating circumstances that affect or reduce the impact of the conduct or otherwise reflect upon the applicant's fitness for the license. No license shall be issued to any applicant if any of the persons identified in this subsection have been convicted, within ten years prior to the filing of the application, of any felony, a crime of moral turpitude or a crime involving gambling.

(5) The association of the applicant, or any of its officers, directors, owners, partners, ~~or~~ key employees, or video lottery operations employees with persons of known criminal background or persons of disreputable character, that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of video lottery operations.

#### 5.0 Technology Providers: Contracts; Requirements; Duties

5.1 The Director shall, pursuant to the procedures set forth in section ~~6922~~ 6924 of Title 29 of the Delaware Code, enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No single technology provider shall supply more than ~~50%~~ 65% of the total number of video lottery machines at the premises of any agent. No more than ~~500~~ 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional ~~500~~ 1,000 machines or other number approved by the Director as permitted by law.

5.11 The following duties are required of all licensed technology providers, without limitation:

(13) It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

6.0 Agents: Duties

The following duties are required of all licensed agents:

6.34 Notify the Director on a continuing basis of any change in officers, partners, directors, key employees, video lottery operations employees, and owners. Such persons will also be subject to a background investigation. The failure of any of the above-mentioned persons to satisfy a background investigation may constitute "cause" for the suspension or revocation of the video lottery agent's license, provided that an agency is first given a reasonable opportunity to remove or replace such person if the agent was unaware of such "cause" prior to the background investigation.

7.0 Game Requirements

7.2 Video games shall be based on bills, coins, tokens or credits, worth between \$.05 and \$5 \$25.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended play features from time to time to which the maximum wager limit of \$5 \$25.00 shall not apply.

7.6 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet.

7.8 Credit slips may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip is located during the ~~one (1) year~~ one hundred and eighty (180) day redeeming period commencing on the date the credit slip was issued.

7.9 No credit slip shall be redeemed more than ~~one (1) year~~ one hundred and eighty (180) days from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one hundred and eighty (180) days from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed ~~one (1) year~~ and one (1) day one hundred and eighty one (181) days from the date of issuance of the credit slip or occurrence of the winning jackpot. The one hundred and eighty day redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

8.0 Accounting and Distribution Procedures

8.5 The net proceeds of the video lottery operations shall be remitted daily or weekly [to the agency] at the discretion of the Lottery Director through the electronic

transfer of funds to an EFT account segregated and held in trust for the agency. To the extent, if any, that such daily or weekly remission cannot be achieved due to the unavailability of bank services, the remission shall be made on the first day that such services are available. Agents shall furnish to the agency all information and bank authorizations required to facilitate the timely transfer of monies to the State lottery fund. Agents shall provide the agency thirty (30) days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

13.0 Enforcement

13.1 The license of a video lottery agent or technology provider may be suspended or revoked for the following reasons:

(3) For cause, such as, but not limited to falsifying any application for license or report to the agency; failure to report information required by the regulations; the material violation of the regulations; or any conduct by the licensee, or any of its owners, officers, directors, partners, ~~or~~ key employees, or video lottery operations employees, which undermines the public confidence in the video lottery system or serves the interest of organized gambling or crime and criminals in any manner. A license may be revoked for an unintentional violation of any Federal, State or local law, rule or regulation provided that the violation is not cured within a reasonable time as determined by the Director, or a longer period where the video lottery agent has made diligent efforts to cure. For purposes of this provision, the licensee is deemed to be familiar with all provisions of these regulations and unintentional violations shall not include violations which the agent or technology provider asserts are unintentional because of lack of awareness of these regulations. Likewise, for purposes of this provision, diligent efforts to cure shall not constitute a defense to a suspension or revocation of the license arising out of reasons contained in section 13.1(1) or (2) or in situations where the violation would not have occurred had the licensee exercised diligent efforts to comply with the requirements when they were first applicable.

13.12 Whoever violates the Lottery chapter 29 Del. C. chapter 48, or any Lottery rule or regulation duly promulgated thereunder, or any condition of a license issued pursuant to 29 Del. C. section 4805, or any Administrative Order issued pursuant to Lottery statutes or Regulations shall be punishable as follows:

(i) If the violation has been completed, by a civil penalty imposed by Superior Court, which by 29 Del. C. section 4823 shall have jurisdiction of civil penalty actions brought pursuant to this section, of not less than \$1000 nor more than \$10,000 for each completed violation. Each day of a continued violation shall be considered as a separate violation if, on each such day, the violator has knowledge of the facts

constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violation shall not be a defense to a continued violation with respect to the first day of its occurrence.

(ii) If the violation is continuing or there is a substantial likelihood that it will reoccur, the Director may also seek a temporary restraining order, preliminary injunction, or permanent injunction in the Court of Chancery, which shall have jurisdiction of an action for such relief.

(iii) In his discretion, the Director may impose an administrative penalty of not more than \$1,000 for each violation. Each day of continued violation shall be considered as a separate violation if the violator has knowledge of the facts constituting the violation and knows or should know that such facts constitute or may constitute a violation. Lack of knowledge regarding such facts or violations shall not be a defense to a continued violation with respect to the first day of its occurrence. Prior to the assessment of an administrative penalty, written notice of the Director's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of such notice to request a public hearing. Any public hearing, if requested, shall be held prior to the imposition of the penalty and shall be governed by section 10125 of Title 29. If no hearing is timely requested, the proposed penalty shall become final and shall be paid no later than 60 days from receipt of the notice of proposed penalty. Assessment of an administrative penalty shall take into account the circumstances, nature, and gravity of the violation, as well as any prior history of violations, the degree of culpability, the economic benefit to the violator resulting from the violation, any economic loss to the State, and such other matters as justice may require. In the event of nonpayment of an administrative penalty within 30 days after all legal appeal rights have been waived or otherwise exhausted, a civil action may be brought by the Director in Superior Court for the collection of the penalty, and for interest, from the date payment was due, attorneys' fees and other legal costs and expenses. The validity or amount of such administrative penalty shall not be subject to review in an action to collect the penalty. Any penalty imposed after a public hearing is held pursuant to this subsection shall be appealable to Superior Court, and such appeal shall be governed by section 10142 of Title 29.

(iv) In his discretion, the Director may endeavor to obtain compliance with requirements of the Lottery chapter, 29 Del. C. chapter 48, by written Administrative Order. Such order shall be provided to the responsible party, shall specify the complaint, and propose a time for correction of the violation. It may also provide an opportunity for a public hearing at which the Director shall hear and consider any submission relevant to the violation, corrective action, or the deadline for correcting the violation.

13.13 The Director shall enforce chapter 48, of 29 Delaware Code and any rules, regulations, or Administrative Orders issued thereunder.

13.14 Any interest, costs or expenses collected by the Lottery under actions instituted by 29 Del. C. section 4823 or these regulations shall be appropriated to the State Lottery Office to carry out the purposes of 29 Del. Code chapter 48.

## DEPARTMENT OF HEALTH & SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

IN THE MATTER OF:

REVISION OF THE  
REGULATIONS  
OF THE BETTER CHANCE

NATURE OF THE PROCEEDINGS:

The Delaware Health and Social Services ("DHSS") initiated proceedings to amend existing regulations contained in the 3000, 7000 and 9000 Sections of the Division of Social Services Manual (DSSM), arising from federal welfare reform legislation. The DHSS's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

On April 1, 1998, the DHSS published in the Delaware Register of Regulations (pages 1514-1516) its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 30, 1998, at which time the Department would review information, factual evidence and public comment of the said proposed changes to the regulations.

It was determined that no written materials or suggestions had been received from any individual or the public.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed regulations of the A Better Chance and Food Stamp programs are adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

Gregg C. Sylvester, MD, Secretary Date: 6-15-98

(or an administrative disqualification hearing), and it is determined collection action will prejudice the case.

PROPOSED AMENDMENTS TO REGULATIONS:

3015 Parenting Education Requirements

Adults and minor parent(s) will be required to attend parenting education classes. Once the individual has attended classes the requirement will be considered completed and will not have to be repeated unless there was a change in circumstances that makes another class beneficial.

A change in circumstance resulting in an extreme amount of stress on the family could be a reason to require the caretaker to attend more than one parent education class. Examples might include a child having extreme difficulties in school, a child exhibiting "acting out" behaviors, a family in which a member is terminally ill, or a new baby in a household where the youngest child was an adolescent.

Requiring a caretaker to take more than one parent education class should not be considered a punitive measure, but one designed to help the family cope with a stressful time or event in the life of the family.

The intent of requiring the caretakers and minor parents to attend parent education classes is that participants will complete the classes they are required to attend. Not completing the classes, without good cause, can result in the imposition of an enhanced family function sanction.

7004.3 Methods of Collecting Food Stamp Claims

DSS shall collect any overissuances of food stamps issued to a household by:

- a. reducing the allotment of the household;
- b. withholding amounts from unemployment compensation from a member of the household;
- c. recovering from Federal pay or a Federal income tax refund;
- d. any other means; unless DSS can demonstrate that all of the means listed above are not cost effective.

Criteria for initiating collection action on inadvertent household and administrative error claims

1. ARMS will initiate collection action (proper notice should have been sent prior to submittal to ARMS, except for food stamps) against the household on all inadvertent household or administrative error claims unless the claim is collected through offset or one of the following conditions apply:

- The total amount of the claim is less than \$35, \$125, and the claim cannot be recovered by reducing the household's allotment;
- Documentation can be provided which shows that the household cannot be located.

2. ARMS will postpone collection action on inadvertent household error claims where an overissuance is being referred for possible prosecution in Superior Court

Initiating Collection on Claims

The Accounting Section of ARMS will initiate collection action by providing the household a written demand letter. The demand letters, including the demand letter sent following a fair hearing decision which upheld the claim, shall inform households that:

1. Unless the household responds to the demand letter and elects a method of repayment ~~within the appropriate time specified below~~, or timely requests a fair hearing and continued benefits, its allotment will be reduced;
2. How the allotment reduction will affect the household benefits;
3. That if the household ~~timely~~ elects allotment reduction, the reduction will begin with the first allotment issued after the election, and;
4. That if the household fails to make a ~~timely~~ election, or to timely request a fair hearing and continued benefits, the reduction will begin with the first allotment issued after ~~timely notice of such election is due~~ the demand letter and notice of adverse action is sent.

Action Against Households Which Fail to Respond

Participating households which have collection actions initiated against them for repayment of an overissuance will have their allotment reduced subsequent to the demand letter and notice of adverse action being sent to the household.

9030.1 Citizens and Qualified Aliens

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if both parents are citizens;
2. Naturalized citizens;
3. Aliens who are lawfully residing in any state and are:
  - a. Veterans honorably discharged for reasons other than alienage, and who fulfills the minimum active-duty service requirements of 24 months or the period for which the person was called to active duty, including military personnel who die during active duty service.
  - b. Individuals on active duty, other than active duty for training,
  - c. Spouses and/or any unmarried dependent children of #a or #b, and or the unremarried surviving spouse of an individual who is deceased if the marriage lasted for at least one year, or was married before the end of a 15-year

time span following the end of the period of military service in which the injury or disease was incurred, or married for any period of time if a child was born of the marriage or was born before the marriage;

4. Aliens residing in the U.S. before August 22, 1996, who are lawfully admitted for permanent residence and who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act. Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter.

Note: For aliens entering the U.S. on or after August 22, 1996:

Aliens who are lawfully admitted to the U.S. for legal permanent residence on or after August 22, 1996, cannot participate in the Food Stamp Program for five years ~~even if they~~ unless they have or can be credited with 40 quarters of coverage.

5. The following aliens are eligible to participate in the Food Stamp program with a five-year time limit:

- refugees admitted under section 207 of the Act;
- asylees admitted and granted asylum under section 208 of the Act;
- aliens whose deportation has been withheld under section 241(b)(3) and 243 (h) of the Act.
- Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and
- Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

The five-year time limit begins from the date they obtained their alien status.

6. A battered spouse or battered child eligible if a veteran or on active duty in U.S. armed forces or spouse or unmarried dependent child of veteran or person on active duty. The nonabusive parent of a battered child and a child of a battered parent may be eligible.

9506

J. Any income that is specifically excluded by any other Federal law from consideration as income for the purpose of determining eligibility for the Food Stamp Program.

The following laws provide such an exclusion:

6. P. L. 97-300, the Job Training Partnership Act (JTPA), 10/13/82. Section 142(b) provides that allowances, earnings and payments to individuals participating in programs under JTPA shall not be considered as income. Subsequently P. L. 99-198, the Food Security Act of 1985, 12/85, amended section 5(1) of the Food Stamp Act to require counting as income on-the-job training payments provided under section 204(5) of Title II of the JTPA except for dependents less than 19 years old. Section 702(b) of P.L. 102-367, the Job Training Reform Amendments of 1992, further amended the Food Stamp Act (by changing the reference) to exclude on-

the-job training payments received under the Summer Youth Employment and Training Program.

14. ~~P.L. 100-485, Section 301, the Family Support Act, 10/31/88 which amended Section 402(g)(1)(E) of the Social Security Act. The value of any child care payments made under Title IV-A of the Social Security Act, including transitional child care payments, are excluded from income. (These are entitlement payments.)~~

16. ~~P. L. 101-508, Section 5801, which amended Section 402(i) of the Social Security Act, 11/5/90. "At-risk" block grant child care payments made under section 5801 are excluded from being counted as income for food stamp purposes and no deduction may be allowed for any expense covered by such payments.~~

17 P.L. 102-550, Housing and Community Development Act of 1992, Section 456(e) provides that payments made under the Youthbuild Program are to be treated like JTPA payments. Therefore they should be excluded from income in accordance with item 6 above.

#### Part B - AMERICAN INDIAN OR ALASKA NATIVE

Usually a law will authorize payments to members of a tribe or band, and the law will apply to the members enrolled in the tribe or band wherever they live. However, items 2, 3, and 4 are general laws, and they apply to all tribes. The individuals should have documentation showing the type of payment and where it originated.

2. 25 USCA 640d-22 (P.L. 93-531, section 22, dated 12/22/74) provides in part that the availability of financial assistance to any Navajo or Hopi Indian pursuant to 25 USCS § 460d-460d-31 may not be considered as income or resources or otherwise used as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

## DEPARTMENT OF HEALTH & SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

Statutory Authority: Public Law 104-193

#### A BETTER CHANCE/FOOD STAMP PROGRAMS

The Delaware Health and Social Services / Division of Social Services has, following consideration of written comments submitted in response to its proposal to align food stamp and *A Better Chance* program sanctions, published on pages 1347-1349 of the March 1, 1998, issue of the Delaware Register, decided to withdraw that proposal.

## [9910 Simplified Food Stamp Program

DSS was approved by Food and Nutrition Service, under the United States Department of Agriculture, to operate a Simplified Food Stamp Program (SFSP). The SFSP permits a state to substitute certain TANF rules and procedures for food stamp rules. Delaware's SFSP has two components:

1. the alignment of ABC's Self-Sufficiency sanctions for Food Stamps; and
2. work for your welfare (workfare) program rules.

Households in which all members, or one or more members, receive ABC may participate in the SFSP. Non-Public Assistance (NPA) households will not participate in the SFSP.

The SFSP will follow all the regular food stamp rules for determining eligibility and certifying households. Under the SFSP, there are four basic changes in the food stamps rules that will affect certain ABC households who receive food stamps, as follows:

- Replaces food stamp work exemptions with ABC exemptions;
- Replaces current Employment and Training (E & T) and job quit requirements and penalties with ABC requirements and penalties; and
- Applies a food stamp sanction for parents who fail to cooperate with school officials to ensure attendance for children under 16; and
- Replaces food stamp workfare penalties with the ABC workfare program requirements and penalties.

### ALIGNMENT OF SANCTIONS

Replace food stamp work exemptions with ABC exemptions

The ABC Self-Sufficiency Requirements include Employment and Training rules, work-related activities, and school attendance requirements. All adult caretakers and other adults in the assistance unit who are not exempt must participate in Employment and Training related activities. There are only two exemptions to this ABC requirement. The first exemption is a change from the regular food stamp E & T exemption rules. The two exemptions are:

- a) A parent caring for a child under 13 weeks of age; or
- b) An individual determined unemployable by a health care professional.

Replace current E & T and job quit requirements and penalties with ABC requirements and penalties

DSS will apply A Better Chance (ABC) Self-Sufficiency Requirements and sanctions to food stamp

households which are also receiving ABC benefits. The Self-Sufficiency Requirements have sanctions for non-compliance with E & T, Work Activity, and parent cooperation to ensure school attendance for children under age 16.

The ABC requirements are:

- All adults in the assistance unit who are not exempt must participate in E & T activities.
- Adult members of the assistance unit must keep a job unless they have good cause to quit.
- Adult members of the assistance unit must cooperate with school officials to ensure school attendance for children under the age of 16.

DSS will align the ABC and Food Stamp work-related sanctioning processes for individuals receiving both ABC and Food Stamps. Food Stamp recipients will be sanctioned when parents fail to cooperate with officials to ensure ABC's School Attendance Requirement for children under age 16.

The ABC sanctions for noncompliance with Self-Sufficiency requirements are:

- First offense - 1/3 reduction in benefits for 2 months or compliance\*, whichever is shorter;
- \*If there is no compliance after 2 months, the sanction goes to the 2nd level sanction.
- Second offense - 2/3 reduction in benefits for 2 months or compliance\*, whichever is shorter; and
- \*If there is no compliance after 2 months, the sanction goes to the 3rd level sanction.
- Third offense -- ABC benefits are lost permanently; the household may reapply as a NPA household.

ABC job quit sanctions are:

- If a household member quits a job without good cause and subsequently fails to comply with ABC's job search requirements, the household loses all benefits for 2 months or until the member complies with the requirement by obtaining a job of equal or higher pay, whichever comes first.
- If a household member quits a job without good cause but complies with ABC's job search requirements, the household will have a:
  - » 1/3 reduction in benefits for 2 months or until the member complies with the requirement by obtaining a job of equal or higher pay, whichever comes first;
  - » 2/3 reduction in benefits for 2 months or until the member complies with the requirement by obtaining a job of equal or higher pay, whichever comes

first; and

» Third offense - ABC benefits are lost permanently; the household may reapply as a NPA household.

Food stamp recipients who are sanctioned under the remaining ABC requirements in DSSM 3000 will be subject to the Riverside rule.

#### Examples of the Aligned Sanction Process:

1. Parent fails to comply with an Employment and Training requirement. The family's ABC grant is reduced by 1/3. The food stamp allotment is determined by using the post-sanctioned grant amount and then reduced by 1/3. If the parent still has not complied at the end of the two months, the grant and food stamps have a 2/3 reduction in benefits. If the parent still has not complied at the end of the second two months, both the ABC and food stamp benefits are closed.

2. An ABC client who already has two E&T sanctions is assessed a third sanction for failure to cooperate with officials to ensure the school attendance of her 13-year-old, closing her ABC case permanently. The food stamp case will also close. If the household reapplies for food stamps, the household will be a non-public assistance case. The household may get food stamps under the regular Food Stamp Program. No E & T sanctions will carry over to the NPA case.

3. A family is only getting ABC benefits and has two E & T sanctions. The family starts receiving food stamps. A parent now has a third E & T sanction. The ABC and food stamp benefits are closed. If the household reapplies for food stamps, the household will be a NPA case. The household may get food stamp under the regular Food Stamp Program. No E & T sanctions will carry over to the NPA case.

4. A household receives only food stamps and has two food stamp E&T sanctions. The household starts to receive ABC. The two FSE&T sanctions are cured and the mandatory individual is placed in ABC E & T. Later, there is a first non-compliance with E & T. The ABC grant is reduced by 1/3. The food stamps will be calculated using the post-sanctioned grant and applying the 1/3 reduction sanction.

5. The father of a family of five voluntarily quits a job without good cause and refuses to comply with subsequent job search requirements. The ABC grant and food stamps receive a full benefit reduction for two months or until the father complies with job search or enters a job of equal or higher pay.

6. The father of a family of four voluntarily quits a job without good cause and refused to comply with subsequent job search requirements. The ABC grant and food stamps receive a full benefit reduction for two

months or until the father complies with job search or enters a job of equal or higher pay. Father starts job search activities after one month. Benefits are restored with a 1/3 sanction for one month.

7. Parent fails to send 13 year old to school and keep scheduled school conferences. The ABC grant is reduced by 1/3. The food stamp allotment is determined by using the post-sanctioned grant amount and then reduced by 1/3. If the parent still has not complied at the end of the two months, the grant and food stamps have a 2/3 reduction in benefits. If the parent still has not complied at the end of the second two months, both the ABC and food stamp benefits are closed. If the household reapplies for food stamps, the household will be a NPA case. The household may get food stamp under the regular Food Stamp Program. No E & T sanctions will carry over to the NPA case.

#### SUMMARY:

- The simplified food stamp program lowers the age at which a child exempts a parent from work requirements to under 13 weeks.
- Current food stamp E & T and job quit requirements and penalties will follow the ABC E & T and job quit requirements and penalties.
- Adult members of the ABC unit must cooperate with school officials to ensure school attendance for children under the age of 16. The sanction for failure to cooperate with this requirement will apply to the entire food stamp household.
- ABC benefits closed for the third Self-Sufficiency sanction remain closed until the end of the ABC waiver.
- Food stamp benefits closed for the third ABC Self-Sufficiency sanction remain closed until the household reapplies and is eligible as a NPA household for food stamps.
- The ABC E & T sanctions will not carry over to NPA households certified under the regular food stamp program.]

## INSURANCE DEPARTMENT

Statutory Authority: 18 Delaware Code,  
Sections 314, 1726 (18 Del.C. §§ 314, 1726)

### REGULATION No. 47

EDUCATION FOR INSURANCE ADJUSTERS, AGENTS,  
BROKERS, SURPLUS LINES BROKERS AND  
CONSULTANTS

In the Matter of:

THE AMENDMENT OF REGULATION NO. 47.  
FINAL ORDER.

COMES NOW, the Insurance Commissioner of the State of Delaware and Orders in conformance with the Proposed Order and Recommendation of the Hearing Officer as follows:

WHEREAS, I have considered the Proposed Order and Recommendation submitted by the Hearing Officer, as well as the entire record of this matter; and

WHEREAS, I adopt the Proposed Order and Recommendation and incorporate the summary of evidence, the proposed findings of fact, and the recommendation of the Hearing Officer by this reference.

NOW THEREFORE, I Order that Regulation No. 47 be amended as referenced herein, effective 30 days from the date hereof

SO ORDERED this 10<sup>th</sup> day of July 1998.

DONNA LEE WILLIAMS  
Insurance Commissioner  
State of Delaware

This is the Proposed Final Order and Recommendation concerning recommended revisions of the abovereferenced Insurance Department Regulation No. 47 relating to education for insurance agents, brokers, surplus lines brokers, consultants and adjusters.

In accordance with the Administrative Procedures Act of the Delaware Code (29 Del. C. Chapter 1001) a hearing was noticed for and held on February 23, 1998 for the purpose of revising and amending Reg. 47. A draft revised Reg. 47 was circulated to numerous interested parties and was posted by the Registrar of Regulations via the Internet in advance of the hearing, The below-signed individual was appointed by the Insurance Commissioner to act as Hearing Officer and to issue this PROPOSED ORDER AND RECOMMENDATION.

Present at the hearing were Christine Schiltz of State Farm, Ron Coudriet of L & W Insurance Agency, Gene Reed of the Delaware Insurance Department, M. Cathy Castiglione of Dover Financial Group, and Leo E, Strine, Sr. of the Financial House.

Summary of Evidence and Information Submitted

The Department proposed numerous revisions to Reg. 47. The most notable substantive revisions are set forth below. Also, amendments recommended as a result of testimony offered at the public hearing or during the subsequent public comment period are distinguished from those originally proposed by the Department. References to sections,

subsections and page numbers are to Exhibit "A", the revised Insurance Department Regulation 47 attached hereto. Also, letters entered into the record are referenced below. All exhibits are incorporated herein by this reference.

1. Page 2, 4 3(4). Continuing education reporting periods are lengthened from one to two years. Resident licensees report in the even years and nonresident licensees report in odd years.

2. Page 3, % 3(12); 9(b). An ethics credits requirement is imposed.

3. Page 5, % 5. A set of qualification standards are expressed for instructors of continuing education courses.

4. Pages 5 and 6, % 6. Expressly states the Insurance Commissioner's authority to sanction course providers and instructors for failure to meet minimum standards.

5. Page 6, It 8(3). Requires not less than seven days notice to the Department of offering of course to allow Department sufficient time to monitor same.

6. Page 7, 4 9. Requires adjusters to fulfill a lesser standard of 10 credit hours of continuing education per biennium. Surety and Marine and Transportation adjusters exempted.

7. Revisions made pursuant to testimonial evidence offered during the hearing and the subsequent comment period and written submissions entered into the record:

(a) Fraternal agents are to be required to meet a reduced continuing education requirement of IO hours. Previously fraternal agents were exempted from the continuing education requirements.

(b) The maximum of five carryover credits is extended to ten for the first reporting biennium to accommodate those licensees who have accrued carryover credits in reliance upon the previous standard.

(c) The term "public carrier insurance" is changed to "travel accident and baggage insurance" on page 8 of the proposed regulation.

8. Exhibits "I": Letter from the Professional Insurance Agents Association signed by Peter N. Calcara, Vice President, Government and Industry Affairs

9. Exhibit "2": Letter from the Delaware Association of Life Underwriters signed by Daniel B. Short, CHC, DALU Legislative Chairman

10. Exhibit "T": Letter from the Property and Casualty Agents Advisory Committee Chairman Frank Gordy, Jr.

Findings of Fact

The Department's stated purpose of revising Reg. 47 is to enhance the continuing education requirements imposed on licensees of the Department to the benefit of Delaware's consumers of insurance products. The Department recommends that numerous administrative changes be made to licensee education standards such as expanding the credit reporting period from one year to two and requiring seven

days notice of the offering of a course in house for course monitoring purposes. Substantively, the Department proposes to require adjusters to satisfy a continuing education requirement as a condition of licensure equal to one-half that required of insurance agents. Also, incorporating an ethics requirement into the continuing education program further promotes professionalism among Department licensees.

Lastly, the Department revised Reg. 47 to expressly state the authority of the Commissioner to enforce applicable standards against course providers, instructors, and other licensees.

I find that the proposed revisions to Reg. 47 are reasonable and promote the goal of enhancing the continuing education program.

#### Proposed Order and Recommendation

I have considered the entire record in this matter, including the testimony of those present at the hearing and the above-referenced written submissions. I hereby propose and recommend that Insurance Department Regulation 47 pertaining to continuing education requirements for Insurance Department licensees be revised as referenced herein and as reflected in Exhibit "A".

Fred A. Townsend III  
Hearing Officer

Effective March 1, 1985  
Amended June 6, 1986. Section 4  
amended March 24, 1987 and effective after 30 days.  
Amended and effective March 1, 1998.

#### SECTION

1. Authority
2. Purpose
3. Definitions
4. Entity Sponsors
5. Entity Sponsors Instructors
6. Commissioner's action upon Entity Sponsors
7. Appeals
8. Required Forms
9. Licensee's Responsibility
10. Penalty for Noncompliance
11. Continuing Education Advisory Council
12. Separability
13. Effective Date

#### Section 1. Authority.

This Regulation is established and promulgated pursuant to 18 Del. C. Sections 314, 1726, and 29 Del. C. Chapter 101.

#### Section 2. Purpose.

The purpose of this Regulation is to establish requirements for insurance education and ethics for insurance adjusters, agents, brokers, surplus lines brokers and for standards for education providers and instructors in order to ensure a high level of professionalism for the benefit of Delaware consumers.

#### Section 3. Definitions.

The following words and terms, when used in this regulation, have the following meanings, unless the context clearly indicates otherwise:

(1) "*Administrative record*" - means any document relating to course approval, course offerings, attendance, course completions or credits, and any other records required to be kept by the Delaware Insurance Code, and any rule or order of the Department.

(2) "*Audit*" - means Insurance Department activity to monitor the offering of courses or examinations, including visits to classrooms, test sites, and administrative offices where documentation of individual attendance and completion records and documentation of instructor credentials is maintained. Audit may include re-evaluating approved classroom course outlines and self-study programs based on current guidelines.

(3) "*Completion*" - when used in the context of:

a. Self-Study, means a passing grade of 70% or better examination.

b. Class, means attendance for the full amount of time approved for each course.

c. Seminar, means attendance for the full amount of time assigned for each workshop or break-out session selected.

(4) "*Compliance date*" - means the 28th day of February of the continuing education reporting period for which resident licensee continuing education or non-resident renewal is required. Each license biennium shall commence on March 1st and end February 28th of the odd year period for non-residents and the even year for residents. **[Example: Non-resident deadline is February 28th of 1999, 2001, 2003 etc. Resident deadline is February 28th of 2000, 2002, 2004 etc.]**

(5) "*Contact person*" - means the person at the entity level with authority to transact business for the entity; through contracts, licenses, or other means, usually as the owner or corporate officer, and who designates the school official to represent the entity.

(6) "*Continuously licensed*" - means an uninterrupted license without lapse due to suspension, revocation, voluntary surrender, cancellation or non-renewal for a period of 12 months or greater.

(7) "*Course*" - shall mean any class, self-study or seminar for insurance representatives, or adjuster licensees which has been approved by the Department for the purpose of complying with continuing education requirements.

(8) “*Credit hour*” (CEUs) - means 1 unit of credit based on a classroom hour or approved hour of credit for a seminar or self-study program.

(9) “*Department*” - means the Delaware Department of Insurance.

(10) “*Disciplinary action*” - means administrative action that has been taken against an individual or entity as a licensee or approved course provider, instructor, or school official for which probation, suspension, or revocation of any license (issued by this or any other state, country, or territory) or approved status has been ordered or consented to or for which a fine has been entered for a wrongdoing against a consumer.

(11) “*Entity sponsor*” - means a natural person, firm, institution, partnership, company, corporation, or association offering, sponsoring, or providing courses approved by the Department in eligible continuing education subjects.

(12) “*Ethics credits*” - mean the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, professionalism, policy replacement consideration, handling or supervising the affairs or funds of another and conflicts of interest.

(13) “*Hour*” - means sixty (60) minutes of class or seminar time, of which at least fifty (50) minutes must be instruction, with a maximum of ten minutes of break per hour all of which must be accounted for on the agenda or syllabus. For self-study courses, “hour” means sixty (60) minutes of time including reading and studying which would be necessary to successfully complete the final examination (actual exam time not included).

(14) “*Initially Licensed*” - means the first insurance license issued an individual by this Department authorizing the transaction of insurance business in this state to which the continuing education requirement applies.

(15) “*Recognized association*” - means an insurance industry association established for at least 5 years.

(16) “*School official*” - means the person designated by the entity as responsible for the timely filing of all required Department forms and documentation for courses and for the maintenance of necessary administrative records including but not limited to classes held, examinations monitored, instructor qualifications, and attendance records.

(17) “*Syllabus*” - means an agenda showing the schedule of how a continuing education course is to be presented including time allotment to subject matter and including any meals and break times.

Section 4. Course Providers.

(a) Provider Approval. A provider who sponsors a continuing education course must be approved by the Commissioner and shall be operated by, including but not limited to, an authorized insurance company, a recognized insurance agents’ association, an insurance trade association, a self-insurance fund, a non-profit educational institute, a

member of a state Bar Association, an independent program of instruction, or an institution of higher learning. Application for entity approval shall be concurrent with application for course approval and shall be submitted on forms prescribed by Department. In assessing a provider’s application for approval, the Commissioner may consider, among other factors, whether the management of a provider, including officers, directors, or any other person who directly or indirectly controls the operation of the provider, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the provider in such position.

(b) General Requirements and Responsibilities.

(1) Providers shall maintain the records of each individual completing a course for 4 years from the date of completion and shall upon request of the Commissioner submit a course roster list of course attendees which includes all information available on Form CE-4.

(2) Providers shall notify the Agent and Agency Licensing Education Section, within thirty (30) days of a change in their mailing address or administrative office address.

(3) Course providers will provide each licensee successfully completing their program a Certificate of Completion/Course report form CE-4 in accordance with Section 8(a)(4). It must contain, at a minimum:

- a. Licensee’s name
- b. Social Security Number
- c. Title of the educational activity
- d. Delaware course number
- e. Delaware sponsor number
- f. Number of CEUs earned
- g. Authorized signature of school official

(4) Course providers shall obtain the Commissioner’s approval for each course offered. A Course Report Form CE-4 shall be completed and distributed to the licensee only after completion of the entire course. Entity Sponsors are required to distribute course report forms to each licensee successfully completing the educational activity within fifteen (15) calendar days.

(5) No partial credit may be granted for any course unless an emergency arises. In case of an emergency, a written explanation shall be provided to the Commissioner upon request.

(6) Self-study courses shall contain an exam that shall be graded by the sponsor or an approved third party. No credit shall be given for a failing grade.

(7) One Continuing Education Credit shall consist of fifty (50) minutes of qualifying classroom instruction.

(8) Course Providers are responsible for the actions of their school officials, instructors, speakers and monitors.

(9) Entity sponsors and instructors shall conduct themselves in a professional manner and may not misrepresent any course material or other information.

(10) Educational activities are approved for a term of 3 years unless requested by the Commissioner to be resubmitted for approval.

(11) No activity may be advertised as having been approved until the sponsor receives written notification from the Department. The use of "approval pending" is acceptable advertising.

#### Section 5. Instructors.

The instructor shall possess one or more of the following qualifications:

(1) A minimum of 3 years working experience in the subject matter being taught.

(2) An approved professional designation in accordance with Section 9(c)(1) from a recognized association.

(3) A degree from an accredited school in the subject matter being taught.

(4) Special expertise, such as employment with a governmental entity; or a documented history of research or study in the area.

(5) An instructor who is a licensee shall receive 2 times the number of continuing education credits granted to participants. The instructor may not receive additional credit for teaching the same course more than once in a biennium reporting period.

(6) Instructors will have the authority and responsibility to deny credit to anyone who disrupts the class or is inattentive. Based on the course providers policies, refunds may be given. It will be a violation of this regulation for an instructor or school official to knowingly allow during the class, the activities of sleeping, reading of books, newspapers, or other non-course materials, use of a cellular phone, or to allow absence from class other than authorized breaks. Penalties will be assessed against participant, instructor, and school, as provided in this regulation. Approval of a course will constitute approval of submitted instructors. Course submissions must include a narrative biography of each instructor.

#### Section 6. Commissioner's action upon violation or non-conformity by course provider or instructor.

If the Commissioner determines that a course provider or instructor has violated any provisions of this regulation, the Commissioner may withdraw approval of the entity sponsor or instructor or may order a refund of course fees to licensees who attended the course, or both. The Commissioner may also refuse to approve courses conducted by specific sponsors or instructors if the Commissioner determines that past offerings by those entity sponsors or instructors have not been in compliance with insurance education laws, rules and regulations. The Commissioner or his/her designee(s) may perform course provider audits on all educational activity proposed to be available to licensees of this State.

#### Section 7. Appeals

(a) Appeals shall be conducted in accordance with the Administrative Procedures Act, 29 Del. C., Chapter 101 and Delaware Insurance Code.

(b) Providers may appeal to the Commissioner or Commissioner's designee, from any adverse decision on their request concerning continuing education activity. Appeals shall be in writing and minimally contain:

(1) A synopsis of the issue,

(2) The basis for the appeal,

(3) The name, address, and telephone number of a contact person,

(4) A copy of the original course submission and supporting documents, and

(5) A copy of any correspondence from the Continuing Education Advisory Council or the Insurance Department.

#### Section 8. Required Forms.

Course Providers shall apply for registration, course submission, repeat course submission and licensee certificate of completion (Delaware Course Report Form) on forms prescribed and approved by the Commissioner. The following forms apply unless or until revised by the Commissioner:

(1) Request for entity sponsor approval shall be made on Department Form CE-1 (Attachment 1).

(2) Request for entity sponsor course approval shall be made on Department Form CE-2 (Attachment 2).

(3) Course providers shall submit a Form CE-3 to the Department not less than 7 days prior to the offering of any course that was previously approved by the Department for an unspecified date or is to be repeated. (Form CE-3 Attachment 3)

(4) Form CE-4 Course Report Form. Form CE-4 contents may be submitted in an alternative format so long as prior approval is obtained.

(5) Continuing Education Course Evaluation Form CE-5. The Department may request licensees to complete course evaluation forms as a means of auditing a course and entity sponsor.

#### Section 9. Licensee's Responsibility.

(a) Each licensee shall retain each original course completion/course report form(s) CE-4 for a period of 3 years. The Form CE-4 may be required in the event of a discrepancy between the licensee's records and the Department's. Each licensee may be subjected to a Department audit of continuing education requirements. Failure to comply with a Department audit may result in suspension of a licensee's license. Pursuant to Section 8(5), the Department may require a licensee to complete a course evaluation form.

(b) General Requirements. Resident licensees not

otherwise exempted shall earn, at a minimum, the number of education credits described below.

(1) Resident licensees required to fulfill continuing education requirements shall complete twenty (20) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

(2) Limited Representatives, Adjusters and Fraternal Agents shall be required to fulfill ten (10) credit hours of Department approved education subjects, four (4) of which shall be in ethics subjects during each biennium reporting period.

(3) Resident licensees subject to this regulation shall file with the Department a copy of their completed course report forms. Course report form CE-4(s) must be received on or before March 20th following the preceding biennium compliance date. Failure to timely file will result in notice of suspension and fines under Section 10 of this regulation.

(4) ~~FAH~~ Resident licensees will receive a continuing education transcript at least ninety (90) days prior to the end of a license biennium and the licensee is responsible for reviewing the transcript for accuracy. To dispute the Department's accounting, the licensee must submit a written exception thereto prior to the biennium deadline (February 28th of even years) and include a copy of the course report form CE-4.

(5) The maximum number of carryover credits shall not exceed ~~5~~ 10 credits for those in excess of the March 1, 1997 through February 28, 1998 Continuing Education period. Thereafter, the maximum number of carryover credits shall not exceed 5 credits in a biennium reporting period. Carryover shall not apply to ethics credit requirements. Ethics credits in excess of the mandatory requirement may apply to non-ethics credit requirements.

(6) Fulfillment of continuing education requirements includes completion of approved subject matter and ethics requirements during the biennium.

(7) No continuing education requirement shall apply to newly licensed individuals during the biennium in which such individuals are licensed. A total of 5 credits in excess of 20 credits earned may apply to carryover during the newly licensed biennium period.

(c) Automatic credit. For experience an individual continuously licensed for twenty-five (25) years or longer prior to the start of a biennium reporting period and/or for holding a professional designation shall receive an automatic credit of ten (10) credits in each biennium. Approved professional designations are the AAI, CEBS, CLU, CPCU, ChFC, FLMI, CFP, FSPA, CIC and RHU. Automatic credits may no be applied to satisfy ethics credit requirements.

(d) License reinstatement after suspension or revocation. All resident and nonresident licensees whose licenses were

canceled, suspended or revoked for a period of twelve (12) months or more shall first complete all licensing requirements under 18 Del. C. Section 1721 including the retaking of all exams for the lines of authority under which the individual proposes to transact insurance.

(e) Extension of time. For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by this regulation may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding biennium period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the biennium period.

(f) Waiver of Continuing Education Requirements. The requirements of this regulation may be waived in writing by the Commissioner for good cause shown. "Good cause" includes long-term illness or incapacity, serving full-time in the armed forces of the United States of America on active duty outside of the state of Delaware, and any other emergency situations deemed appropriate by the Commissioner. Request for waivers of continuing education requirements shall be made in writing and shall be submitted to the Commissioner no later than thirty (30) days prior to the end of the biennium for which such waiver is requested. Any waiver granted pursuant to this regulation shall be valid only for the biennium for which waiver application was made.

(g) Exemptions to continuing education requirements:

(1) Agents licensed for the lines of title insurance or ~~public carrier insurance~~ travel accident and baggage insurance.

(2) Interim Agents.

(h) Nonresident Agent, Broker, Consultant responsibilities.

(1) ~~FAH~~ Nonresident licensees shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status and compliance with continuing education requirements in his or her state of residence. The filing requirement for nonresidents shall be on odd years with a deadline date of February 28<sup>th</sup> every odd year beginning in year 1999.

(2) The Department will send renewal notices to all nonresident licensees at least ninety (90) days before the end of the biennium. Nonresidents may request a thirty (30) day extension to file for renewal provided it is in writing to the Commissioner at least thirty (30) days prior to the biennium deadline and shall provide evidence of seeking a home state letter of certification.

(3) ~~FAH~~ Nonresidents who fail to provide certification from home state under this regulation shall be

subjected to the same penalties as a resident agent under this regulation pursuant to Section 10.

**[(i) Nonresident Adjusters responsibilities.**

**(1) Nonresidents receiving a license in Delaware - no requirements for the biennium in which they are licensed.**

**(2) Nonresident adjusters who must meet continuing education requirements established by the insurance department in their home state shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status and compliance with continuing education requirements in his or her state of residence. The filing requirement for nonresidents shall be on odd years. The first biennium for which nonresidents shall meet continuing education requirement begins on March 1, 1999 and ends February 28, 2001.**

**(3) Nonresidents who are not required to complete continuing education requirements in their home state are subject to the same continuing education requirements that a resident adjuster must complete in accordance with Section 9(b)(2) of this regulation.**

**(4) Exemptions to Adjuster Continuing Education Requirements. Resident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation are exempt from the provisions of Section 9(b)(2) of this regulation. Nonresident adjusters licensed for the lines of Fidelity and Surety and/or Marine and Transportation shall file a home state letter of certification not more than ninety (90) days old when received by the Commissioner, which provides evidence of license status. The filing requirement for nonresidents shall be on odd years. The first biennium for which nonresidents shall meet continuing education requirements begins on March 1, 1999 and ends February 28, 2001.]**

Section 10. Penalty for noncompliance.

(a) Pursuant to 18 Del. C. Sections 334, 1732, and 1734, any licensee who fails to complete the minimum requirements of this regulation, and who has not been granted an extension of time to comply under Section 9(e)(1) of this regulation, shall be subject to an administrative penalty up to and including a \$2000.00 fine and suspension of license(s) for one year. Submission of false or fraudulent information shall result in an administrative penalty up to and including a \$15,000.00 fine and permanent revocation of license.

(b) Any appointment(s) of such licensee suspended for failure to comply with this regulation shall likewise be suspended by operation of law. Upon satisfactory completion of education requirements in arrears and payment of any administrative fine imposed within a period of twelve (12) months, all license(s) and appointments shall be reinstated

unless or until the insurer notifies the Commissioner and licensee in writing of the insurer's intent to terminate such appointment. If suspension is for a period of twelve (12) months or greater, the licensee is subjected to complying with 18 Del. C. Section 1721 including the retaking of all examinations for line(s) of authority that the individual proposes to transact insurance.

(c) The Commissioner may by Order require any individual licensed under 18 Del. C. Chapter 17 based upon reasonable belief that a violation of Title 18 occurred, to complete in addition to biennium insurance education requirements, approved continuing education course work to ensure the maintenance and improvement of a licensee's insurance skills and knowledge.

Section 11. Continuing Education Advisory Council

The Council shall consist of ten (10) licensees drawn from the professional organizations in the State, 5 from the life and health field and 5 from the property and casualty field.

(1) One of the primary responsibilities of the Council shall be to review applications for course approvals and make recommendations to the Commissioner regarding acceptance/ rejection and the number of CEUs to be granted if accepted.

(2) The Council shall also advise the Commissioner on matters of concern as they arise and provide liaison between the Department and the professional organizations.

(3) Members shall serve a term of 2 years. Any member may be reappointed for successive terms. The committee shall meet every 2 months on the third Tuesday of the month or additionally as required. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

(4) All previously approved continuing education courses at the time this regulation becomes effective shall resubmit for approval within twelve months of the effective date of this regulation. Such courses must be resubmitted for approval within twelve (12) months of the effective date of this regulation.

(5) The final decision on each Entity Sponsor submission shall be the Commissioner's.

Section 12. Separability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

Section 13. Effective Date

This Regulation shall become effective March 1, 1998 and shall remain in effect until rescinded. Prior to the aforementioned date the provisions of Regulation 47 as last amended in 1987 shall remain in effect.

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**DEPARTMENT OF SERVICES FOR  
CHILDREN, YOUTH AND THEIR  
FAMILIES****OFFICE OF CHILD CARE LICENSING**

Statutory Authority: 11 Delaware Code  
Section 8563(e) (11 Del.C. §8563(e))

On July 17, 1997 Senate Bill 132 was signed into law, requiring the Department to promulgate regulations pertaining to Child Abuse Registry checks and to conduct Child Abuse Registry checks on certain child care and health care personnel.

These regulations give guidance on issues pertaining to the Child Abuse Registry check and include the persons that are subject to the law. Employers who operate a child care or health care facility must request a Child Care Registry Check for persons fitting the definition of person seeking employment as of January 1, 1997.

The draft regulations were published in the State Register during the month of January, 1998 and a public hearing was held on January 22, 1998. There were no comments or changes requested during the public comment period.

The responsibility for this function has been placed in the Office of Child Care Licensing, Criminal History Unit.

**REGULATIONS FOR CHILD ABUSE REGISTRY  
CHECKS FOR CHILD CARE AND HEALTH CARE  
PERSONS**

**I. LEGAL BASE**

The legal base for these regulations is in the Delaware Code, Title 19, Chapter 7, Section 708.

**II. PURPOSE**

The overall purpose of these regulations is the protection for the "vulnerable" population in child care and health care facilities. To this end, persons seeking employment in a licensed child care facility or health care facility shall submit to a Child Abuse Registry check. A search of the Child Abuse Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.

**III. DEFINITIONS**

A. "Child Abuse Registry" means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect.

B. "Child Abuse Registry Check" means a computer search of the Child Abuse Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or

neglect.

C. "Child Care Facility" means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.

D. "Child Care Person" means any person in a child care facility in a position which provides the opportunity to have direct access to children without the presence of other employees or adults.

E. "Conditional Child Care Person" means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child abuse registry check by the employer.

F. "Conditional Health Care Person" means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child abuse registry check by the employer.

G. "Criminal History Unit" means the Unit located in the Division of Family Services that is responsible for the implementation of the Child Abuse Registry checks for child care and health care persons.

H. "Department" means the Department of Services for Children, Youth and Their Families or any of the Divisions.

I. "Direct Access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

J. "Division of Family Services" means the Division that maintains the Child Abuse Registry.

K. "Employer" means any child care facility or health care facility as defined.

L. "Health Care Facility" means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.

M. "Health Care Person" means any person in a health care facility in a position which provides the opportunity to have direct access to persons receiving care without the presence of other employees or adults.

N. "Person Seeking Employment" means any person applying for employment in a child care or health care facility that affords direct access to persons receiving care at such a facility, or a person applying for licensure to operate a child care facility.

O. "Volunteer" means any person who has direct access to persons receiving care during the performance of unpaid duties.

**IV. PERSONS SUBJECT TO THE LAW**

Persons subject to the law shall be those persons who are hired or apply for the status described below on or after January 1, 1998.

A. Child care and health care persons subject to the Child Abuse Registry check shall be persons in a child care

or health care facility who are in a position which involves:

1. Supervisory or disciplinary authority over persons receiving care, or
2. The opportunity to have direct access to persons receiving care without the presence of other employees or adults.

## V. EMPLOYER RESPONSIBILITIES

A. No employer who operates a child care facility or health care facility shall hire any person without requesting a Child Abuse Registry check for that person. The Child Abuse Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994.

B. The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child Abuse Registry check. The release is a form developed by the Department.

C. Any person hired prior to the employer receiving the results of the Child Abuse Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child Abuse Registry check.

## VI. CHILD ABUSE REGISTRY CHECK PROCESS

A. The child care or health care person completes and signs a release form in order for a Child Abuse Registry check to be conducted.

B. Upon receipt of the of the signed release, the Criminal History Unit will conduct a Child Abuse Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.

C. When the person is not listed in the Child Abuse Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.

D. When the person is listed in the Child Abuse Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.

## VII. REVIEW OF DEPARTMENT RECORDS

A. When a person is listed in the Child Abuse Registry as a perpetrator they will be allowed the opportunity to review the record information maintained by the Division of Family Services.

B. The following procedures shall be established to permit the review of record information.

1. The person shall submit a request in writing to the address provided as part of the results of the Child Abuse Registry Request.

2. Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.

3. The review shall take place in the presence of a Division of Family Services staff member. The employer may also be present.

## VIII. CONFIDENTIALITY

The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.

## X. PENALTY

Any employer who hires a person seeking employment without requesting a Child Abuse Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.

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## DEPARTMENT OF TRANSPORTATION

### OFFICE OF AERONAUTICS

Statutory Authority: 2 Delaware Code  
Section 601-603 (2 Del.C. 601-603)

#### Order of Rule Adoption

Before Delaware Department of Transportation, Office of Aeronautics, Regarding Public Use Airport Licensing and Obstruction Removal.

Pursuant to 2 Delaware Code, Section 601 - 603, Delaware Department of Transportation hereby issues this order promulgating regulations for public use Airport Licensing and Obstruction Removal. Following notice and a public hearing held on March 26, 1998, on the proposed regulations, the Department makes the following findings and conclusion:

#### Summary of Evidence and Information

Proposed Regulations describing public use Airport Licensing and Obstruction Removal were proposed by the Delaware Office of Aeronautics to make for a safer environment for both the aviator and those on the ground. An announcement of public hearing was made in the Delaware Register of Regulations, Volume I, Issue 9, on March 1, 1998. A Public Hearing was held on March 26, 1998, at the Delaware Department of Transportation Administration Building, Dover, DE. The report of the hearing officer has been received by the Secretary. Five people attended the hearing, and there were no oral or written comments received.

#### Findings of Fact

The proposed Regulations were properly advertised as

required by Delaware Code. The public was afforded an opportunity to ask questions and make oral or written comments. There was no opposition to the Regulations. The public is supportive of adopting the Regulations.

#### Nonsubstantive Change

There are two minor, nonsubstantive changes to be made to the final document. State Code, Paragraph 101 18, Agency Findings; Form of Regulations (c), states "If the changes are not substantive, the agency shall not be required to repropose the regulation change. Whether a change constitutes substantive or nonsubstantive matter shall be determined by the agency head." Following are the changes:

#### AIRPORT LICENSING REGULATION

##### SECTION 5.1.(2) Change to read:

Appropriate displacement marking shall be painted on paved surfaces in accordance with FAA guidelines and shall be installed as in-ground flush markers or other suitable FAA approved markings on turf strips.

##### SECTION 7.3. Change to read:

3. Airport Closure/Private Use Designation: No public use airport shall operate in Delaware without a license issued by the Department. Therefore, after license revocation, an airport shall either close or be redesignated as private use and be deleted from listing in the Department of Commerce's Airport/Facility Directory (AFD).

#### Conclusions

The proposed Regulations were promulgated by the Department in accord with its statutory duties and authority as set forth in 2 Delaware Code, Section 601-603.

The Department offered but did not receive public comment.

These rules are hereby adopted with an effective date of July 10, 1998.

Anne P. Canby  
Secretary  
Department of Transportation

#### DELAWARE AIRPORT LICENSING REGULATION

##### SECTION 1. PURPOSE

The purpose of this regulation is to implement the State of Delaware Airport Licensing Program authorized by State law, pursuant to Chapter 1, Title 2, Sections 162 and 163,

Delaware Code, as amended, in order to provide for a safe statewide aviation program and to provide for the safety of the states' citizens. This Regulation sets forth the purpose, policies, criteria, and procedures for the inspection, licensing, and the revocation of licenses for public use airports or heliports within the State of Delaware. The pertinent sections of the Delaware Code are:

##### 1. Chapter I, Title 2, Section 162 which states that:

"The Department, through the Office of Aeronautics may approve and license airports and helicopter landing sites, or other air navigation facilities, in accordance with regulations it adopts pertaining to such approval and licensure. Licenses granted under this section shall be renewed annually in conjunction with the Federal Aviation Administration sponsored airport survey program."

##### 2. Chapter 1, Title 2, Section 163 which states that:

"The Department, through the Office of Aeronautics, may suspend or revoke any certificate of approval or license issued by it when it determines that an airport, restricted landing area, or other navigation facility is not being maintained or used in accordance with the provisions of this chapter and the rules and regulations lawfully promulgated by it pursuant thereto."

Aviation safety is of paramount importance in Delaware and depends in great measure upon flight safety and the availability of airports in the State, both of which are regulated by the FAA with the assistance of the Delaware Office of Aeronautics.

Safety standards are an integral part of the licensing program for Delaware Airports. Annual airport inspections conducted in conjunction with the FAA Form 5010 Airport Master Record Review for licensing can identify existing and potential safety problems and recommend mitigation measures. Inspections are a necessary and integral part of the licensing process and shall be performed by or at the direction of the Office of Aeronautics.

#### SECTION 2: DEFINITIONS

The following definitions shall apply for the Airport Licensing Regulation:

1. "Airport": means any area of land or water which is designated by the FAA for the landing and takeoff of aircraft, and all appurtenant areas used or suitable for airport buildings, other airport facilities and all appurtenant rights-of-way. For purpose of these Regulations, "Airport" shall include all navigational facilities as defined herein.

2. "Airport Approach Area": the area in and around an airport or heliport, as defined by Federal Aviation Regulations (FAR) Part 77 - Objects Affecting Navigable Airspace. The approach surfaces associated with the airport approach area are longitudinally centered on the extended runway centerline and extend outward and upward. These surfaces can differ by type of airport and runway characteristic and therefore must be determined using specific FAR Part 77 criteria.

3. "Annual License Renewal": means once in each calendar year.

4. "Displaced Threshold": The threshold of a runway is the beginning of that portion of the runway available and suitable for the landing of airplanes. A displaced threshold is one that is located at a point on the runway other than at the runway end. It is an artificial threshold for a runway which shortens the landing length of the runway in the direction of the displacement. The portion of runway behind a displaced threshold may be available for takeoffs in either direction and landings from the opposite direction.

5. "Hazard to Air Navigation": Hazards to Air Navigation are severe obstructions to air navigation, classified as such by an FAA study under FAR Part 77.

6. "Heliport": means any helicopter landing area or any area of land or water which is designated by the FAA for the landing and takeoff of helicopters, and all appurtenant areas used or suitable for heliport buildings other heliport facilities and all appurtenant rights-of-way.

7. "Licensing Criteria": the parameters defined in this regulation that are used to determine whether or not an airport is to be licensed.

8. "Obstruction to Air Navigation": any penetration of approach or transitional surfaces by an object or structure at an airport or heliport, as defined by FAR Part 77. Other objects or structures can be obstructions to air navigation outside the immediate vicinity of an airport if they encroach on navigable airspace as defined by FAR Part 77.

9. "Office of Aeronautics": Subdivision of the Department of Transportation that is responsible for aviation matters.

10. "Temporary Waiver": an intentional relinquishing of a known right or claim for a specific period of time, after careful consideration of all relevant factors.

11. "Transitional Surface": the area in and around an airport or heliport, as defined by FAR Part 77. The transitional surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended.

## SECTION 3. LICENSING AND GRANDFATHER RIGHTS

Each public use airport or heliport operated in Delaware shall be licensed, operated, and maintained in accordance with this Licensing Program, as described herein this Regulation. Under previous legislation, grandfather rights for airport licenses extended to airports and restricted landing areas which were being operated on or before April 24, 1945. Under the new legislation, no grandfather rights are given or implied. Thus, each public use airport or heliport is subject to the licensing regulation adopted by the Department.

## SECTION 4: AVIATION FACILITIES

Under the new law, all public-use airports and heliports shall be licensed to operate in Delaware. Existing public-use airports and heliports, as of the date of adoption of this Licensing Regulation are the following:

- Chandelle Estates
- Delaware Airpark
- Henderson Airport
- Jenkins Airport
- Laurel Airport
- New Castle County Airport
- Smyrna Airport
- Summit Airport
- Sussex County Airport
- Chorman Airport
- DelDOT Helipad

## SECTION 5: LICENSING PROCESS

The licensing process, as envisioned in this Regulation, requires that the Department inspect each existing public-use airport in the State by a representative of the Office of Aeronautics. All existing public-use airports shall automatically be included in the process. The inspections shall be conducted using the methods described in this section. Successful completion of the licensing process shall result in the issuance of an operating license for an airport. New public-use airports shall request a license in writing from the Delaware Department of Transportation, Office of Aeronautics. To adequately describe these steps, this section consists of the following: licensing criteria, annual licensing program, and new airport licensing process. Each of these steps is described below:

1. **License Criteria:** The Department hereby incorporates by reference FAR Part 77; FAA Advisory Circular 150/5300-13, Airport Design; and such other federal or state regulations as may be referred to herein. Licensing

criteria have been developed for two specific areas of airport or heliport facility operation. The first involves the requirement of each public use airport to obtain and carry minimum levels of liability and property insurance. The second involves the requirement for displaced thresholds at runways obstructed by existing roadways, railways, or navigable waterways. In order for a public use airport or heliport to be licensed in Delaware, it shall comply with all standards and regulations pertinent to these two areas.

1) Minimum Insurance Requirements: As a part of this new regulation, it is required that public use airports carry a minimum of one million dollars (\$1,000,000) in liability insurance covering bodily injury and property damage liability in any one accident, along with fifty-thousand dollars (\$50,000) coverage for property damage for each accident. Certificates of insurance, issued by an insurance company licensed to write such insurance in the State of Delaware, shall be filed annually with the Department of Transportation, Office of Aeronautics, as a part of the licensing procedure. The Department shall be notified of any insurance coverage lapses at public use airports in Delaware.

2) Displaced Threshold Requirements: Delaware public use airports and heliports should be physically suitable for aviation, in accordance with the aviation purpose intended and operated in a safe manner. Runways that are obstructed, as defined in FAR Part 77, either by highways, railways, or navigable waterways shall have the thresholds of the impacted runways displaced by the appropriate distance. A displaced threshold has been defined as an artificial threshold for a runway which shortens the landing length of the runway in the direction of the displacement. The portion of runway behind a displaced threshold may be available for takeoffs in either direction and landings from the opposite direction. The displacement is caused by the need to provide clearance over an obstruction to air navigation, based upon an imaginary approach slope, which is defined in FAR Part 77.

For a public roadway, a clearance of 15 vertical feet is needed; for an Interstate Highway a clearance of 17 vertical feet is needed; for a railway, a clearance of 23 vertical feet is required; and for a navigable waterway, a clearance equal to the highest mobile craft to transverse the waterway is needed. For example, if the imaginary surface has a 20:1 slope, a 15 vertical foot clearance at the end of a runway will require 300 linear feet of displacement.

~~[Appropriate displacement markings shall be painted on paved surfaces in accordance with FAA guidelines and shall be installed as in-ground flush markers or other suitable FAA approved markings on turf strips.]~~

[Appropriate displacement marking shall be painted

on paved surfaces in accordance with FAA guidelines and shall be installed as in-ground flush markers or other suitable FAA approved markings on turf strips.]

2. Annual Licensing Program: Each of the airports listed in Section 4 of this Regulation are subject to annual licensure by DeIDOT through the Office of Aeronautics. To carry out this program, the Office of Aeronautics shall implement the following steps:

1) Inspections: Beginning in 1998, the Office of Aeronautics shall conduct annual on-site inspections of each public-use airport in Delaware, in accordance with the criteria set forth in this Regulation. Existing public-use airports need not apply for a new license, but shall automatically be included in the licensing process. Inspections of each airport shall be conducted by personnel from the Office of Aeronautics. The Office of Aeronautics reserves the right to conduct inspections at its convenience and is not limited in the number of inspections that it may conduct at an airport during any one year period.

2) Inspection Period: While the inspections for licensure do not need to be conducted within an exact 12 month period, they do have to occur at least once in each calendar year.

3) Validity Period: Licenses issued during 1998 will be valid until December 31, 1999; in subsequent years, licenses issued will be valid until the end of the following calendar year.

3. New Airports: In the event that a new public use airport is developed, or a private use airport desires to become a public use facility, the airport owner shall submit a request for a license in writing to the Office of Aeronautics, along with a copy of the FAA airspace approval for the airport. Within 30 days of the receipt of the written request, the Office of Aeronautics shall inspect the facility using criteria specified in this Regulation. From that inspection, the Office shall either issue a license or cite the conditions requiring correction before a license can be issued.

## SECTION 6: TEMPORARY WAIVERS

The licensing process should be one that encourages safety while at the same time does not place an undo burden upon the existing public use airports or heliports in the State. If a violation of this regulation occurs, the airport or heliport in question may attempt to rectify the situation, but in doing so, may require additional time to comply.

In cases where the correction of a regulation violation requires more than 10 days, a temporary waiver may be issued by the Office of Aeronautics permitting the delay. The temporary waiver shall specify a definite time period for

correction of the condition. The process for issuing a temporary waiver is as follows:

1. **Violation Cited:** In the event that an airport cannot show proof of insurance, or has not displaced a threshold subject to the requirements of this regulation, the Delaware Department of Transportation, through its Office of Aeronautics shall cite the airport for the violation. In the citation, the airport owner shall have 10 days to correct the violation.

2. **Waiver Request:** If the cited airport owner believes that there are mitigating circumstances that prevent compliance with these regulations within the 10 day period, he or she may request a waiver in writing from the Department through its Office of Aeronautics. The waiver request should state the mitigating circumstances and the timeframe requested for compliance.

3. **Waiver Terms:** The Department may grant a waiver to the requesting airport owner/operator after consideration of the mitigating circumstances preventing compliance and the time needed to comply. The waiver issued by the Department through its Office of Aeronautics shall state the timeframe for compliance.

4. **Waiver Implementation:** The Office of Aeronautics shall approve or disapprove the request for waiver within the 10 day normal compliance period. The decision shall be delivered in writing to the airport owner requesting the waiver. If the waiver is granted, the temporary nature of the waiver shall require that the Office of Aeronautics revisit the airport at the end of the temporary extension of the compliance period to determine if the airport is in compliance. If the airport is in compliance, a license shall be issued. If the airport is not in compliance, Section 7 of this regulation shall be implemented.

#### SECTION 7: LICENSE REVOCATION

Under certain circumstances, the license to operate a public use airport or heliport in Delaware can be revoked. Revocation of the license for a public use airport or heliport shall result in either: 1) the immediate closure of the airport or heliport, or 2) the change in designation from public use to private use airport or heliport. The circumstances leading to revocation are listed below.

1. **Refusal or Failure to Comply with this Regulation:** If a public use airport or heliport operator refuses or fails to comply with the terms and conditions of licensure contained in this regulation, that airport or heliport is subject to license revocation. Conditions of licensure include:

- Displacement of a runway threshold when obstructed by highways, railways, or waterways.
- Valid insurance coverage in the amounts and types stated in this regulation.

2. **License Revocation:** Airport licenses are to be revoked upon reaching the following trigger points:

- Upon the 11th day after a citation was given to an airport owner, given that no temporary waiver was requested by that airport owner.
- Upon the expiration of temporary waivers.

3. **Airport Closure/Private Use Designation:** ~~[No public use airport shall operate in Delaware without a license issued by the Department. Therefore, after license revocation, an airport shall either close or be redesignated as private use and be deleted from listing in the Department of Commerce's Airport/Facility Directory (AFD).]~~

[No public use airport shall operate in Delaware without a license issued by the Department. Therefore, after license revocation, an airport shall either close or be redesignated as private use and be deleted from the list in the Department of Commerce's Airport/Facility Directory (AFD).]

#### APPENDIX A

##### License Inspection Form

1. Airport Name: \_\_\_\_\_

2. Inspector:  
Date: \_\_\_\_\_

##### Displaced Threshold Requirements

3. If yes, which runway(s) are impacted:  
Sketch below: \_\_\_\_\_

4. Discussed with Airport Manager? \_\_\_\_\_

5. Timeframe for correction? \_\_\_\_\_

6. Waiver required/issued? (If yes, please attach) \_\_\_\_\_

Insurance Certificate: \_\_\_\_\_

Requested                      Supplied (attach copy of certificate)

Comments:

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Department for the review and final ranking of each eligible obstruction, shall meet and consider the preliminary rankings. Based upon the recommendation of the Committee and after a public hearing, funds allocated by the Legislature for obstruction removal shall be directed toward individual projects on a statewide basis.

## DELAWARE AIRPORT OBSTRUCTION REGULATION

### SECTION 1. PURPOSE

The purpose of this regulation is to implement Part 1, Title 2 of the Delaware Code, Sections 601-603 and related sections of Title 9 of the Delaware Code, specifically Sections 3005, 4407 and 6302, as amended, applicable to the three counties respectively; for the identification, permitting or removal of objects or structures located within statutorily defined boundaries and which may be a hazard to aviation or which constitute an "obstruction to air navigation," as that term is defined herein and is hereinafter generically referred to as "obstruction" (see Appendix A for Federal Aviation Regulations Part 77 Obstruction Standards). This regulation is derived from the legislation and provides the means of enforcement and the penalties imposed for failure to comply with the legislative requirements.

It has long been recognized that airports have unique needs for operational safety that interact with surrounding land uses. In particular, the need for runway approaches that are clear of obstructions has long been the target of the Federal Aviation Administration. Numerous federal projects are undertaken each year to remove dangerous obstructions from land either within an airport's control or adjacent to the airport.

The primary concern in this process is the safety of aircraft flight operations and the welfare of persons and real property on the ground. The Delaware Code authorizes the Department through its Office of Aeronautics to require a review of building permit applications. This review shall result in either an approval or disapproval of building permits for any structure that constitutes an obstruction to air navigation.

The Delaware Code also authorizes the Department to remove potentially hazardous existing obstructions in the approach areas to airport runways after compensating the owners of the obstructions. The process for removing existing obstructions is described in this regulation and entails the identification and preliminary ranking and costing of each eligible obstruction to air navigation, as defined in this regulation. Input shall be solicited from airport owners and operators. An Advisory Committee, appointed by the

### SECTION 2: DEFINITIONS

The following definitions shall apply for the Airport Obstruction Regulation:

1. "Airport": means any area of land or water which is designated for the landing and takeoff of aircraft, and all appurtenant areas used or suitable for airport buildings, other airport facilities and all appurtenant rights-of-way. For purpose of this regulation, "Airport" shall include all navigational facilities as defined herein.
2. "Airport Approach Area": the area in and around an airport or heliport, as defined by Federal Aviation Regulations (FAR) Part 77 - Objects Affecting Navigable Airspace. The approach surfaces associated with the airport approach area are longitudinally centered on the extended runway centerline and extend outward and upward. These surfaces can differ by type of airport and runway characteristic and therefore must be determined using specific FAR Part 77 criteria.
3. "Displaced Threshold": The threshold of a runway is the beginning of that portion of the runway available and suitable for the landing of airplanes. A displaced threshold is one that is located at a point on the runway other than at the runway end. It is an artificial threshold for a runway which shortens the landing length of the runway in the direction of the displacement. The portion of runway behind a displaced threshold may be available for takeoffs in either direction and landings from the opposite direction.
4. "Hazard to Air Navigation": Hazards to Air Navigation are severe obstructions to air navigation, classified as such by an FAA study under FAR Part 77.
5. "Heliport": means any helicopter landing area or any area of land or water which is designated by the FAA for the landing and takeoff of helicopters, and all appurtenant areas used or suitable for heliport buildings other heliport facilities and all appurtenant rights-of-way.
6. "Imaginary Surface": is a two dimensional plane stretching upward and outward from an airport. These surfaces are defined by FAR Part 77 criteria for approach surfaces, transitional surfaces, and other applicable surfaces.
7. "Licensing Criteria": the parameters defined in this

regulation that are used to determine whether or not an airport is to be licensed.

8. "Notice to Airmen (NOTAM)": a notice concerning the establishment, condition, or change in any component, facility, service, or procedure of, or hazard in the National Airspace System, the timely knowledge of which is essential to personnel concerned with flight operations.

9. "Obstruction to Air Navigation": any penetration of approach or transitional surfaces by an object or structure at an airport or heliport, as defined by FAR Part 77. Other objects or structures can be obstructions to air navigation outside the immediate vicinity of an airport if they encroach on navigable airspace as defined by FAR Part 77.

10. "Office of Aeronautics": Subdivision of the Department of Transportation that is responsible for aviation matters.

11. "Transitional Surface": the area in and around an airport or heliport, as defined by FAR Part 77. The transitional surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended.

12. "Transport Airport": Airports that accommodate business jets as a regular part of their operational fleet mix. These airports have runways that are at least 5,000' long and 75' wide.

13. "Turf Airport": Airports that have no paved runways.

14. "Utility Airport": Airports with paved runways that are smaller than Transport Airports.

### SECTION 3. AIRPORTS IMPACTED

The Delaware Code indicates that all public use airports are covered by the obstruction removal program. By definition, a public use airport can be either publicly or privately owned, but it must be open to the public for use and be so designated on aeronautical charts. Existing public-use airports and heliports, subject to this Obstruction Regulation as of the date of adoption of this Regulation are the following:

	<u>Airport Role</u>
• Chandelle Estates	Utility
• Delaware Airpark	Utility
• Dover Air Force Base	Transport
• Henderson Airport	Turf
• Jenkins Airport	Turf
• Laurel Airport	Turf
• New Castle County Airport	Transport
• Smyrna Airport	Turf

• Summit Airport	Utility
• Sussex County Airport	Transport
• Chorman Airport	Utility
• DeIDOT Helipad	Heliport

### SECTION 4. BUILDING PERMIT REQUIREMENTS

In accordance with 2 Del.C. 602, a Building Permit may be issued by the county or municipality having land use jurisdiction in which the construction or alteration of facilities defined below are located, only after review and approval by the Delaware Office of Aeronautics.

1. Building Permit Requirement: Such Building Permit is required for the construction, erection, placement or alteration of any smokestack, tree, silo, flagpole, elevated tank, power line, or radio or television tower antenna, building, structure or other improvement to real property which meets any of the following conditions described in Subsection 2.

2. Notification: The Delaware Office of Aeronautics shall be notified by each county or municipality, having land use jurisdiction of any proposed construction that may create an obstruction to air navigation as defined herein. The formal notification process is activated through the existing building permit processes in effect in each such county or municipality; specifically: 9 Del. C. 3005 for New Castle County, 9 Del. C. 4407 for Kent County, 9 Del.C. 6302 for Sussex County and the respective municipal codes. These notices shall provide a basis for evaluating the effects of the construction or alteration of any object that may pose a hazard to air navigation. As defined, these objects can be natural growth, terrain, or permanent or temporary construction or alteration of any structure (including appurtenances) by a change in its height or other dimensions.

1) Conditions for Notice: In addition to the foregoing listed obstructions, the Delaware Office of Aeronautics shall be notified and shall approve prior to issuance of a Building Permit any facility which meets the following description and/or conditions:

- Any construction or alteration of more than 200 feet in height above the ground level at its site;
- Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes:
  - 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each public use airport with at least one runway more than 3,200 feet in length,
  - 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each public use airport with its longest runway no more than 3,200

feet in length,

- 100 to 1 within a trapezoidal shape beginning at the end of a runway of any public use airport, at an initial width of 50 feet, and extending outward for a distance of 20,000 feet to a width of 3,000 feet at its ending point.

2) Maps: To assist the Counties in determining when the notice requirement is activated, the Delaware Office of Aeronautics shall distribute maps to each County agency responsible for issuing Building Permits. These maps shall detail the notice areas, including all corresponding imaginary surfaces around public use airports, as defined above.

3) Notice Period: Required notices shall be submitted to the Office of Aeronautics with the Building Permit applications at least 30 days before the date the proposed construction or alteration is to begin.

4) Emergencies: In the case of an emergency involving essential public services, public health, or public safety, that requires immediate construction or alteration, the 30 day requirement may be waived by the Office of Aeronautics, and the notice may be sent by telephone, fax, or other expeditious means, with appropriate forms submitted within 5 days.

5) Information Requirements: Notices shall be filed with the Office of Aeronautics on forms provided by said Office to the Counties (see Appendix B). These forms shall require the following minimum information:

- Exact location and dimensions of the proposed structure or object to be constructed or altered.
- Planned height above ground level of the structure or object at its highest point, including elevations.
- Site plan of the construction or alteration.

#### SECTION 5. TEMPORARY OBSTRUCTIONS

Should circumstances develop that cause the erection of temporary obstructions to air navigation which do not require a Building Permit, the Delaware Office of Aeronautics shall be informed through the normal notification process (as described in Section 4) of the temporary obstruction.

1. Temporary Obstructions: Temporary obstructions may occur in response to emergency conditions or life-threatening situations. For example, a crane may be brought in to remove wreckage in the approach areas of Delaware airports.

2. Approvals: Approvals for temporary obstructions (see

Section 6) shall be obtained from the Delaware Office of Aeronautics.

3. Notams: The airport impacted by a temporary obstruction shall be responsible for filing the Notice to Airmen (NOTAM) describing the obstruction and its likely duration. To file a NOTAM, the airport operator must report information essential to personnel concerned with flight operations to the nearest Federal Aviation Administration Flight Service Station. In this case, notice must be given concerning the location and duration of the temporary obstruction.

#### SECTION 6. BUILDING PERMIT PROCESS

As stated in the law, a Building Permit, issued by the County or municipality having land use jurisdiction, shall first be reviewed by the Delaware Office of Aeronautics if it meets the description and/or conditions set forth in Section 4 of this regulation. Such Building Permit for the construction or alteration of each object or structure shall not be issued by the issuing authority until such time as the Office of Aeronautics has approved the application.

The process of review for a Building Permit application as it pertains to any obstruction or potential obstruction impacting aviation shall be as follows:

1. Initial Review: Appropriate County and local municipalities responsible for zoning shall conduct the initial review of the Building Permit application. Using the maps provided by the Office of Aeronautics, the agencies shall make a determination whether or not the proposed building or structure invokes the notice requirements listed above. If the proposed structure exceeds the height of the imaginary surfaces around a particular airport, the application, with the completed notice form, shall be referred to the Office of Aeronautics for review.

2. Office of Aeronautics Evaluation: Once the Building Permit and completed notice form reach the Office of Aeronautics, an evaluation of the impact on air safety shall be conducted. If, in the opinion of the Office of Aeronautics, the proposed building or structure poses an obstruction to air navigation, or if, in the opinion of the Office of Aeronautics, the proposed building or structure unduly limits the planned development of an airport in question, that permit shall be denied.

3. Criteria: Criteria used in the evaluation process shall include FAR, Part 77, and approved airport master plans and the current State Aviation System Plan. FAR Part 77 criteria should focus on the imaginary surfaces for approach areas and transitional or lateral boundaries. The master plans and

system planning information should examine future airport plans for development, and incorporate those plans into potential future FAR Part 77 surfaces.

4. Approval: If the Office of Aeronautics, finds that no obstruction to air navigation results from the proposed structure and that the development does not limit the operation or development of an airport in question, the Building Permit shall be approved. The Office of Aeronautics shall approve or reject the Building Permit application within 30 days of receipt. If the Building Permit is requested under emergency conditions involving essential public services, public health, or public safety, that require immediate construction or alteration, the Office of Aeronautics may expedite the review and approval or disapproval process as soon thereafter as practical.

#### SECTION 7. REMOVAL OF EXISTING OBSTRUCTIONS

The Delaware Code at 2 Del.C. Chapter 6 provides the legal authority for removal of aviation obstructions. Obstructions to air navigation decrease operational safety margins at airports. For this reason, the Delaware Code provides DelDOT, through the Office of Aeronautics, the authority to identify and remove obstructions located in approach areas to public use airports.

The overview to the obstruction removal process was described briefly in Section 1. As stated, the process entails the identification and preliminary ranking and costing of each eligible obstruction to air navigation, as defined in this regulation. Input shall be solicited from airport owners and operators. An Advisory Committee, appointed by the Department for the review and final ranking of each eligible obstruction, shall meet and consider the preliminary rankings. Based upon the recommendation of the Committee, funds allocated by the Legislature for obstruction removal shall be directed toward individual projects on a statewide basis.

To carry out this program the following process shall be observed:

1. Inventory: The Office of Aeronautics shall be responsible for the development of a Statewide obstruction inventory at each public use airport. This inventory shall be conducted periodically, but not less than every 24 months, and shall be carried out in conjunction with the airport owner input. The inventory shall document the existence of obstructions to air navigation as defined in FAR Part 77 in the approach areas at each public use airport. This inventory shall be updated, as needed, to properly identify obstructions and shall be maintained at the Office of Aeronautics. As part of the process, the cost to remove each obstruction shall be estimated.

2. Preliminary Priority Ranking: A preliminary priority ranking system shall be used to rank the obstructions. This priority system shall consider the following items:

- Severity of the obstruction
- Accident history at the associated airport
- Role of the airport in the State system
- Cost to remove the obstruction
- Activity levels at the candidate airports

3. Deed Restriction: The next step in the process involves the protection of State resources and the elimination of projects that are not considered important by airport owners. In order to protect State resources, any cumulative State funding for obstruction removal, on or off of an airport, that totals more than \$10,000 will require a commitment by the airport owner (in the form of a deed restriction) to maintain the airport a public use facility for not less than 10 years from the date that cumulative State expenditures exceed \$10,000. Failure by the airport owner to agree to incorporate this deed restriction into the airport deed shall be grounds for DelDOT to disqualify the airport from the obstruction removal program for that obstruction. If the airport owner agrees to the deed restriction and the airport is converted to another use during the 10 year time period, the grant funds shall be reimbursed to the State upon closure, sale, or reclassification (to private use) of the facility, on a graduated scale as follows:

<u>Years Used As Airport</u>	<u>% Grant Reimbursed to State</u>
Prior to Conversion to Other Use	
1-5	100%
6	80%
7	60%
8	40%
9	20%
10	0%

The State reserves the right to remove a hazard to air navigation, as determined by an FAA airspace study, even if the airport sponsor does not agree to the deed restriction.

4. Advisory Committee: An Advisory Committee shall be appointed by the Department to review the preliminary ranking of obstruction removal projects. Projects over \$10,000 that an airport owner will not include in a deed restriction shall be removed from consideration by the Advisory Committee. The Office of Aeronautics shall provide the following:

- The preliminary ranking from the priority ranking

model; and,

- The comments and rankings of the airport owners and operators.

The Advisory Committee shall meet and rank each of the obstruction removal projects and present a final list of rankings to the Department. This final list shall be published and a public hearing shall be conducted.

5. Implementation Process: Once the ranking has been adopted by the Department, an implementation process will be initiated by DelDOT using the following criteria:

- Available Funding
- Deed Restriction
- Existing Easements
- Airport Owner Cost Sharing

#### SECTION 8. PENALTIES

In accordance with Delaware law, 2 Del.C. 603, whoever constructs, erects, places or alters any obstruction, as that term is used in this Regulation, without first obtaining a Building Permit as required by 2 Del. C. Chapter 6, shall upon being found liable in a civil proceeding brought by the Department, be fined an amount not exceeding One Thousand (\$1,000) Dollars. Each day's continuation of a violation of this section shall be deemed a separate and distinct offense, all of which may be brought together in a single action.

#### SECTION 9. JURISDICTION AND APPEALS

The Department may enforce the provisions of this regulation by the filing of a complaint in a court of appropriate jurisdiction, including a complaint for injunctive relief.

#### APPENDIX A:

##### FAR Part 77 Obstruction Standards Subpart C

Obstructions shall be identified through assessments of each public use airport. Criteria to identify obstructions are outlined in FAR Part 77, Subpart C - Obstruction Standards, as follows:

##### Subpart C - Obstruction Standards

###### 77.21 Scope.

(a) This subpart establishes standards for determining obstructions to air navigation. It applies to existing and proposed manmade objects, objects of natural growth, and terrain. The standards apply to the use of navigable airspace by aircraft and to existing air navigation facilities, such as an

air navigation aid, airport, Federal airway, instrument approach or departure procedure, or approved off-airway route. Additionally, they apply to a planned facility or use, or a change in an existing facility or use, if a proposal therefor is on file with the Federal Aviation Administration or an appropriate military service on the date the notice required by § 77.13 (a) is filed.

(b) At those airports having defined runways with specially prepared hard surfaces, the primary surface for each such runway extends 200 feet beyond each end of the runway. At those airports having defined strips or pathways that, are used regularly for the taking off and landing of aircraft and have been designated by appropriate authority as runways, but do not have specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At those airports, excluding seaplane bases, having a defined landing and takeoff area with no defined pathways for the landing and taking off of aircraft, a determination shall be made as to which portions of the landing and takeoff area are regularly used as landing and takeoff pathways. Those pathways so determined shall be considered runways and an appropriate primary surface as defined in § 77.25(c) will be considered as being longitudinally centered on each runway so determined, and each end of that primary surface shall coincide with the corresponding end of that runway.

(c) The standards in this subpart apply to the effect of construction or alteration proposals upon an airport if, at the time of filing of the notice required by § 77.13 (a), that airport is -

(1) Available for public use and is listed in the Airport Directory of the current Airman Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement; or,

(2) A planned or proposed airport or an airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, and, except for military airports, it is clearly indicated that that airport will be available for public use; or,

(3) An airport that is operated by an armed force of the United States.

(d) [Deleted]

##### 77.23 Standards for determining obstructions.

(a) An existing object, including a mobile object, is, and a future object would be, an obstruction to air navigation if it is of greater height than any of the following heights or surfaces:

(1) A height of 500 feet above ground level at the site of the object.

(2) A height that is 200 feet above ground level or above the established airport elevation, whichever is higher, within 3 nautical miles of the established reference point of an airport, excluding heliports, with its longest runway more

than 3,200 feet in actual length, and that height increases in the proportion of 100 feet, for each additional nautical mile of distance from the airport up to a maximum of 500 feet.

(3) A height within a terminal obstacle clearance area, including in initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance.

(4) A height within an en route obstacle clearance area, including turn and termination areas, of a Federal airway or approved off-airway route, that would increase the minimum obstacle clearance altitude.

(5) The surface of a takeoff and landing area of an airport or any imaginary surface established under §§ 77.25, 77.28, or 77.29. However, no part of the takeoff or landing area itself will be considered an obstruction.

(b) Except for traverse ways on or near an airport with an operative ground traffic control service, furnished by an air traffic control tower or by the airport management and coordinated with the air traffic control service, the standards of paragraph (a) of this section apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by:

(1) Seventeen feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance.

(2) Fifteen feet for any other public roadway.

(3) Ten feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(4) Twenty-three feet for railroad.

(5) For a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

#### 77.25 Civil airport imaginary surfaces.

The following civil airport imaginary surfaces are established with relation to the airport and to each runway. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end.

(a) Horizontal surface - a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

(1) 5,000 feet for all runways designated as utility or visual;

(2) 10,000 feet for all other runways.

The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(b) Conical surface - a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(c) Primary surface - a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

(1) 250 feet for utility runways having only visual approaches.

(2) 500 feet for utility runways having nonprecision instrument approaches.

(3) For other than utility runways the width is:

(i) 500 feet for visual runways having only visual approaches.

(ii) 500 feet for nonprecision instrument runways having visibility minimums greater than three-fourths statute mile.

(iii) 1,000 feet for a nonprecision instrument runway having nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument runways. The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

(d) Approach surface - a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(1) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

(i) 1,250 feet for that end of a utility runway with only visual approaches;

(ii) 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

(iii) 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

(iv) 3,500 feet for that end of it nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile;

(v) 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile; and

(vi) 16,000 feet for precision instrument runways.

(2) The approach surface extends for a horizontal distance of:

(i) 5,000 feet at a slope of 20 to 1 for all utility and visual runways;

(ii) 10,000 feet at a slope of 34 to 1 for all nonprecision instrument runways other than utility; and,

(iii) 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precision instrument runways.

(3) The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(e) Transitional surface - these surfaces extend outward and upward at right angles to the runway centerline and the runway center-line extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

Imaginary surfaces in the airport approach areas are defined above and would be used to identify obstructions to air navigation at airports and heliports in Delaware that are eligible for removal under the law. By definition, penetrations of these imaginary surfaces by objects are obstructions to air navigation.

**\*PLEASE SEE DIAGRAM ISOMETRIC VIEW OF SECTION A - A AT THE END OF THE REGULATION**

## APPENDIX B:

### PROPOSED CONSTRUCTION/ALTERATION IN AIRPORT ZONES NOTIFICATION FORM

The Delaware Code, Part 1, Title 2, Sections 601-603 specifies where construction/alterations can be done in and around airports. The Office of Aeronautics has been tasked to insure new construction or changes to existing structures conform to the legislative mandate. As such, the Office of Aeronautics shall be notified of any proposed construction that may create an obstruction to air navigation. The primary concern in this process is the safety of aircraft flight operations and the welfare of persons and real property on the ground. Notice requirements shall incorporate the following areas and/or conditions:

- Any construction or alteration of more than 200 feet in height above the ground level at its site;

- Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes:

- 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each public use airport with at least one runway more than 3,200 feet in length.

- 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each public use airport with its longest runway no more than 3,200 feet in length.

- 100 to 1 within a trapezoidal shape beginning at the end of a runway of any public use airport, at an initial width of 50 feet, and extending outward for a distance of 20,000 feet to a width of 3,000 feet at its ending point.

- Federal Aviation Regulations, Part 77, also apply.

The following information must be submitted to the Office of Aeronautics with the Building Permit application at least 30 days before the date the proposed construction or alteration is to begin if said construction/alteration falls within any of the above stated conditions. Each County has been provided maps showing the areas in question around each airport. The Office of Aeronautics shall approve or reject based on the above criteria.

### REQUIRED INFORMATION TO BE PROVIDED TO THE OFFICE OF AERONAUTICS:

Exact Location: \_\_\_\_\_

Distance from Runway: \_\_\_\_\_

Height above ground of highest point after construction (attach site plan): \_\_\_\_\_

Height above sea level: \_\_\_\_\_

DATE RECEIVED: \_\_\_\_\_

APPROVE \_\_\_\_\_ DISAPPROVE \_\_\_\_\_

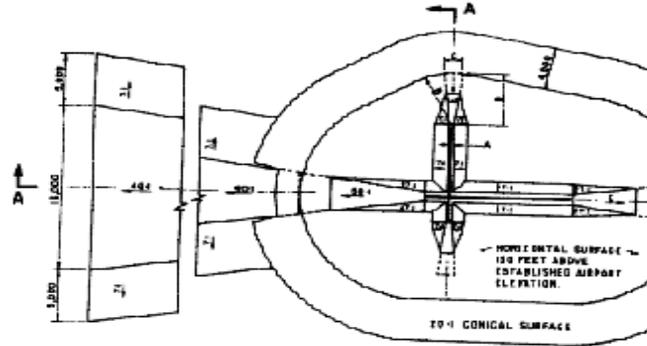
SIGNED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

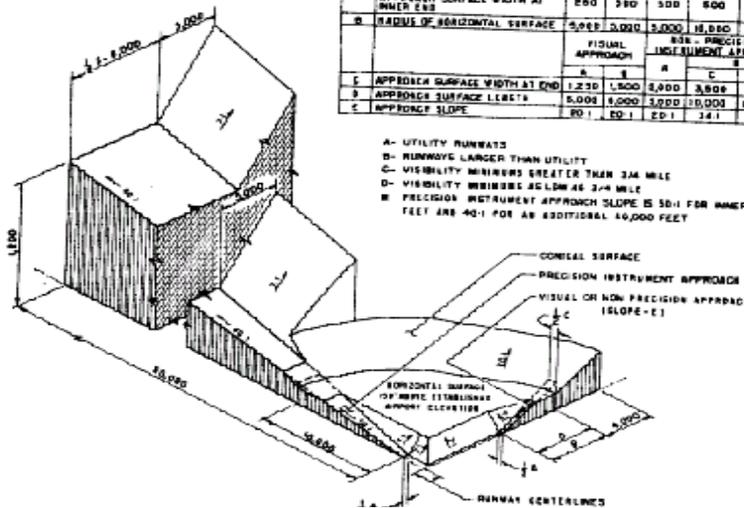
Office of Aeronautics

**\* The Delaware Department of Transportation is not responsible for the accuracy of the provided information. It is the responsibility of the provider to supply accurate information for evaluation. In addition, site plans and other material given to DelDOT as a part of this application process will not be returned.**

# FINAL REGULATIONS



DIM	ITEM	DIMENSIONAL STANDARDS			
		NON-PRECISION INSTRUMENT		PRECISION INSTRUMENT	
		A	B	A	B
A	WIDTH OF PRIMARY SURFACE AND APPROACH SURFACE WIDTH AT INNER END	200	300	500	600
B	RADIUS OF HORIZONTAL SURFACE	5,000	5,000	5,000	15,000
		FIGURAL APPROACH		PRECISION INSTRUMENT APP	
		A	B	A	B
C	APPROACH SURFACE WIDTH AT END	1,200	1,500	2,000	3,000
D	APPROACH SURFACE SLOPE'S	5:00	8:00	3:00	10:00
E	APPROACH SLOPE	20:1	40:1	20:1	34:1



- A- UTILITY RUNWAYS
- B- RUNWAYS LARGER THAN UTILITY
- C- VISIBILITY MINIMUMS GREATER THAN 3/4 MILE
- D- VISIBILITY MINIMUMS AS LOW AS 3/4 MILE
- E- PRECISION INSTRUMENT APPROACH SLOPE IS 30:1 FOR INNER FEET AND 40:1 FOR AN ADDITIONAL 10,000 FEET

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

EXECUTIVE ORDER  
NUMBER FIFTY-FOUR

TO: HEADS OF ALL STATE  
DEPARTMENTS, AGENCIES AND  
AUTHORITIES, AND ALL POLITICAL  
SUBDIVISIONS AND GOVERNMENTAL  
UNITS OF THE STATE OF DELAWARE

RE: PARENTAL INVOLVEMENT IN EDUCATION

WHEREAS, ensuring a proper education for all children is a top priority of the Carper-Minner Administration; and

WHEREAS, the Administration and the General Assembly are working to improve accountability in our schools; and

WHEREAS, it is a fact that education, especially early learning, begins in the home; and

WHEREAS, studies have demonstrated that children who live in homes with positive learning environments achieve at higher academic levels; and WHEREAS, it is important for parents and care-givers to initiate and nurture the learning process for their children; and

WHEREAS, it is equally important for families to be welcomed into schools by teachers and administrators; and

WHEREAS, in many instances parental and care-giver involvement in education is hindered by their own lack of education and knowledge about how to be involved; and

WHEREAS, the Lieutenant Governor has for many years been a leading advocate of governmental and private-sector efforts to improve adult literacy; and

WHEREAS, there is a natural link between adult literacy and family literacy; and

WHEREAS, the Carper-Minner Administration has established a goal of finding 10,000 mentors to help Delaware students who need tutors and positive adult role models; and

WHEREAS, this effort is well on its way with well over 5,000 mentors recruited; and

WHEREAS, as important as mentors and good teachers are, there is no substitute for the involvement of caring,

committed parents, care-givers, and families in a child's educational career; and

WHEREAS, the Carper-Minner Administration is therefore committed to stimulating a complementary effort that would recognize the importance and value of parents and care-givers and assist in giving them the ability and opportunity to make the commitment to "mentor" their own children, help their children learn, be able to work in partnership with classroom teachers, and place a high priority on education.

NOW, THEREFORE, I, THOMAS R. CARPER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Committee to Improve Parental And Family Involvement in Education (the "Committee") is hereby established.

2. The Lieutenant Governor shall chair the Committee, which shall consist of representatives from the Department of Education; the Delaware Congress of Parents and Teachers; the Delaware State Parent Advisory Council; the Education Committee of the Delaware NAACP; the Delaware Chief School Officers' Association; the Delaware Association of School Administrators; the Delaware School Boards Association; the Delaware State Education Association and the business community. The Committee shall consist of no more than fifteen members. The members shall be appointed by the Governor and shall serve at the pleasure of the Governor.

3. The Committee shall promote the use of best-practice parental and family involvement strategies within Delaware schools and work with other groups to create and improve parental involvement initiatives. Such strategies shall include those designed to make parents feel more welcome in schools, valued as their child's advocate, and involved in the shared decisionmaking process, as well as those which are designed to encourage a commitment by parents and families to support the education of their children and their children's schools in specific ways.

4. The Committee shall find ways publicly to support and encourage parents and care-givers to rededicate themselves to their children's education by initiating and fostering the learning process through positive reinforcement and by providing a suitable learning environment within the home. To this end, the Committee shall develop an outreach strategy to engage parents and families through community centers, places of worship, public housing communities, fraternal organizations, and neighborhood and civic associations. The Committee shall reach out to and work with

communities and families which, for various economic, cultural, or historical reasons, have not felt welcome or been active in Delaware schools.

5. To ensure that parents have the information they need to become involved in their children's education in a meaningful way, the Committee shall review and adapt the Parent Handbook developed by the Delaware Congress of Parents and Teachers to produce a clearly written and user-friendly guide for parents. This guide shall be available for distribution by local school districts to parents as soon as possible in the Fall of 1998 and by September 1 each subsequent school year. This guide shall: 1) identify those critical tasks which parents and care-givers can perform to help their children succeed in school work and which parents and care-givers can perform as volunteers to improve their children's schools; 2) identify the responsibilities of the education community to assist parents and families with these tasks; 3) identify the communication tools which can be used by parents and care-givers to most effectively interact with school teachers and administrators, enabling them to become active partners with their children's schools; 4) identify the responsibilities of the education community to include parents and families in the school improvement planning process; 5) include a glossary of terms; and 6) include resource information that will assist parents and families in obtaining support for their children.

6. The Committee shall promote family literacy as an important factor in a successful home learning environment.

7. The Committee shall encourage parents not to be intimidated by their own lack of education and shall promote existing adult literacy, English As a Second Language, and Parents As Teachers programs as tools to assist parents in providing educational support for their children.

8. The Committee shall promote public recognition of successful school initiatives including, but not limited to, the awarding of an annual "State of Delaware Family School Partnership Award" to schools with exemplary parental involvement programs.

9. The Committee shall develop a plan to provide incentives and recognition for businesses with parent-friendly policies that promote parental involvement in education. The plan shall incorporate a program to provide an annual "State of Delaware Business/Family/School Partnership Award" to businesses which do an outstanding job in promoting parental involvement by their employees and which assist their employees in making such involvement possible. Such award program shall be established no later than November 15, 1998.

10. Recognizing that the skills and resources provided to mentors can help parents improve their children's learning success, no later than January 15, 1999, the Committee shall, in consultation with the Department of Education, develop a plan for implementation in the 19992000 school year to ensure that parents who wish to mentor their own children can receive appropriate training and guidance such as is received by other mentors in schools.

Approved this 5<sup>th</sup> day of June, 1998

Thomas R. Carper, Governor

Attest:

Edward J. Freel, Secretary of State

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**GOVERNOR'S APPOINTMENTS**

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Architectural Accessibility Board	Mr. Virgil F. Horne, Jr.	6-03-02
Combined Charitable Solicitation Campaign Committee	Mr. Thomas Platt	5-30-99
Council on Alcoholism, Drug Abuse and Mental Health	Mr. Joseph P. Connor, Jr Mr. William J. McLean Mr. Stephen A. Moores Dr. Jorge A. Pereira-Ogan Dr. Dolores Finger Wright	6-10-01 6-10-01 6-10-01 6-10-01 6-10-99
Council on Hispanic Affairs	Mr. Jose Echeverri Sister Margaret Giblin Ms. Margarita Gonzales The Honorable Steven Pepper Dr. Maribel Garcia-Zaragoza	6-12-01 6-12-01 6-12-01 6-12-01 6-12-01
Commissioner of the Family Court	Ms. Loretta M. Young	5/21/02
Delaware Commission for Women	Ms. Eileen Conner Ms. Geraldine Lewis-Loper Dr. Kathleen Jacobs Mr. Donald E. Tuites Ms. Rhonda Tuman Ms. Mary K. Vane Ms. Carol Ann Weisenfeld Mr. Donald M. Williams	5-27-01 5-27-01 5-27-01 5-27-01 5-27-01 5-27-01 5-27-01 5-27-01
Delaware Health Care Commission, Chairperson	The Honorable Gregg C. Sylvester, M.D.	Pleasure of the Governor
Department of Public Safety	Mr. Brian J. Bushweller	Pleasure of the Governor
Governor's Advisory Council for Exceptional Citizens	Mr. Theodore Ressler	Pleasure of the Governor
Governor's Council on Lifestyles & Fitness	Dr. Avron Abraham Dr. Michael J. Axe Ms. Martha C. Bogdan Ms. Beverly Breeding	5-27-01 5-27-00 5-27-00 5-27-00

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**GOVERNOR'S APPOINTMENTS**


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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Governor's Council on Lifestyles & Fitness	Ms. Evelyn Burkle	5-27-01
	Mr. James DiDonato	5-27-00
	Ms. Ann Grunert	5-27-01
	Ms. Annette Hubbard	5-27-01
	Mr. Matthew Hampe	5-27-00
	Ms. Bonnie Ingram	5-27-00
	Mr. George Krupanski	6-10-00
	Mr. Mark Lally	5-27-00
	Mr. William Messick	5-27-00
	Ms. Amy Milligan	5-27-00
	Ms. Lori Reynolds	5-27-01
	Mr. James Smith	5-27-01
	Dr. Lynn Snyder-Mackler	5-27-01
	Mr. Steve Taylor	5-27-01
	Mr. David Tiberi	5-27-01
Ms. Sheri Woodruff	5-27-01	
Justice of the Peace for Sussex County	Mr. John D. McKenzie	5-17-02
Wastewater Facilities Advisory Council, Chairperson	Mr. Joseph L. Corrado, Jr.	5-27-01

**BEFORE THE INSURANCE COMMISSIONER  
FOR THE STATE OF DELAWARE**

IN THE MATTER OF: | Docket No. 98-10  
Amendment to REGULATION 10 |

**ORDER**

WHEREAS, Department of Insurance Regulation 10 was adopted December 1, 1983, and substantially revised on September 13, 1996; and

WHEREAS, unlike earlier versions of Regulation 10, the September 13, 1996 revision failed to incorporate a provision addressing the geographical scope of claims subject to arbitration; and

WHEREAS, the September 13, 1996 revision further failed to retain that provision addressing how parties in arbitration shall be addressed; and

WHEREAS, appearing within both 18 *Del. C.* §§ 331 and 332 are provisions requiring an insured institute arbitration proceedings within 90 days of an adverse decision;

IT APPEARS that changes are necessary to clarify the scope of the regulation as well as to reiterate the time limitation imposed upon aggrieved parties first filing for arbitration under the regulation.

IT FURTHER APPEARS, for the reasons that follow, amending Regulation 10 to address geographical scope and time limitations will not trigger the public notice and hearing requirements of 29 *Del. C.* chapter 101.

1. Non substantive changes in existing regulations to alter style, form or correct technical errors are exempted from the procedural requirements of the Administrative Procedures Act. 29 *Del. C.* § 10113(b)(4). In the same manner, an amendment to an existing regulation to make it consistent with changes in basic law but which otherwise do not alter the substance of the regulation will also be exempt. 29 *Del. C.* § 10113(b)(5).

2. In the present matter, amending Regulation 10 to limit its scope to the geographical limits of Delaware for first and third party property and PIP claims and to first party claims arising elsewhere as set forth in the subject insurance policy, reflects the scope of the original version of the regulation and does not alter the rights and responsibilities of potential parties. This change is thus nonsubstantive in nature and made to correct a drafting error when Regulation 10 was amended in 1996. It is not subject to the notice and hearing requirements of 29 *Del. C.* chapter 101. In a similar manner, adding a

paragraph naming the respective parties in an arbitration also is made to correct a 1996 omission and also does not effect the substantive rights of the parties.

3. Adding the 90 day time limitation does not effect the rights of potential parties because it is already prescribed by statute. The addition of these limits into the language of Regulation 10 is designed to make the regulation more informative and “user friendly” to potential litigants. It follows that this change is in the nature of a nonsubstantive change in style or form, and therefore exempted under 29 *Del. C.* § 10113(b)(5).

NOW THEREFORE IT IS ORDERED that Department of Insurance Regulation 10 be amended as follows and as it appears as Exhibit “A”, attached hereto:

1. A new Section 5 shall be added, which section shall be entitled “General” and shall read as follows:

“(a) These Arbitration Rules shall be considered applicable to accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party property and PIP claims and to first party claims in other states or territories of the United States or to foreign countries as set forth in the insurance policy.

(b) In arbitration proceedings and practice, the claimant who initiates the proceeding by filing a request for arbitration of a controverted claim or issue with the Insurance Commissioner shall be known as the “claimant,” and the company or companies against which claim or claims is asserted shall be known as “respondent(s).”

(c) Requests for arbitration with respect to health insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date of receipt of the written adverse determination or denial.

(d) Requests for arbitration with respect to homeowners insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date an offer of settlement or denial of coverage or liability has been made by an insurer.”

2. Regulation 10 shall be renumbered to reflect the addition of the new Section 5.

3. The text of Section 2 of Regulation 10 is hereby amended to read as follows:

“Every insurer providing coverage or benefits in this State for automobile, homeowners’ or health shall submit to arbitration of covered claims (as defined by 18 *Del. C.* §§ 331, 332, 21 *Del. C.* §§ 2118 and 2118B) by their insureds unless it is exempted from arbitration by the Insurance Commissioner. For the purposes of this regulation the term

“insurer”, in addition to its ordinary meaning, includes health plans, health service corporations and health maintenance organizations. In a similar manner, the term “insured” shall, in addition to its ordinary meaning, include the participants, subscribers or members of such health plans, health service corporations or health maintenance organizations.”

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 1998

Donna Lee H. Williams  
Insurance Commissioner

**STATE OF DELAWARE  
DEPARTMENT OF INSURANCE**

**AMENDED REGULATION NO. 10  
ARBITRATION  
(for claims arbitrated after October 13, 1996)**

Effective: July 15, 1998

Section

1. Purpose and Statutory Authority.
2. Insurer’s Duty to Arbitrate.
3. Exemption from Arbitration.
4. Exclusion from Arbitration.
5. General
6. Notice and Manner of Service.
7. When Arbitration May Be Commenced.
8. Commencement of Arbitration.
9. Arbitration Panels.
10. Arbitration Hearings.
11. Subrogation Arbitration.
12. Arbitration Fees.
13. Appeals.
14. Effective Date and Transition.

§ 1. Purpose and Statutory Authority.

The purpose of this Regulation is to implement 18 *Del. C.* §§ 331, 332, Chapter 23, and 21 *Del. C.*, §§ 2118 and 2118B by establishing the procedures for the arbitration of certain claims for benefits available under automobile, health, or homeowners’ policies or agreements, and/or those statutes. This Regulation is promulgated pursuant to 18 *Del. C.*, §§ 311, 2312 and 29 *Del. C.*, Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

§ 2. Insurer’s Duty to Arbitrate.

Every insurer providing coverage or benefits in this State for automobile, homeowners’ or health shall submit to arbitration of covered claims (as defined by 18 *Del. C.* §§

331, 332, and 21 *Del. C.* §§ 2118 and 2118B) by their insureds unless it is exempted from arbitration by the Insurance Commissioner. For the purposes of this Regulation the term “insurer”, in addition to its ordinary meaning, includes health plans, health service corporations and health maintenance organizations. In a similar manner, the term “insured” shall, in addition to its ordinary meaning, include the participants, subscribers or members of such health plans, health service corporations or health maintenance organizations..

§ 3. Exemption from Arbitration.

(a) Insurers requesting exemption from the duty to arbitrate under a homeowners’ or a health insurance policy shall submit to the Insurance Commissioner the following:

- (1) A request for exemption from arbitration;
- (2) Copies or description of policies or plans for which exemption is requested;
- (3) A detailed description of its internal review or appraisal procedures;
- (4) Copies of documents to be provided to the insured describing its internal procedures including a statement that the insurer will be bound by a decision favorable to the insured;
- (5) A certification by an officer of the insurer with binding authority that the procedures described will be followed in all cases, that the insurer will be bound by a decision favorable to the insured and that all documents submitted are true and accurate; and

(6) Payment of a non-refundable fee of \$25.00.

(b) The Commissioner shall exempt a homeowner insurer from arbitration under this Regulation and continue such exemption as long as the internal appraisal or review procedures submitted under subsection (a) contain the following minimum requirements:

- (1) The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer’s assigned adjuster nor his or her supervisor may participate on the panel nor anyone under that supervisor’s control;
- (2) The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;
- (3) The insured is permitted to be represented by counsel;
- (4) The insured is informed as to the right to appeal, if any, an adverse decision;
- (5) The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision; and

(6) The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department.

(c) The Commissioner shall exempt a health insurer from arbitration under this Regulation and continue such exemption as long as the internal review procedures submitted under subsection (a) satisfy the requirements for approval set forth below as either “standard” or “optional”.

(1) Standard Approval:

a. The internal appraisal or arbitration procedure is performed by an individual(s) who is qualified and impartial. However, neither the individual who originally denied the claim nor his or her supervisor, nor anyone under that supervisor’s control may participate in the review. If the claim involves the denial or refusal to certify either medical treatment or procedure, the reviewing individual(s) shall be a qualified health care professional in the appropriate health care discipline.

b. The insured may be represented by counsel;

c. The insured is informed in writing that the review is not binding and they may have additional legal rights that could be enforced in a court.

d. The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be provided to the parties, in writing, signed by the reviewer(s) with a brief explanation of the reasons for the decision; and

e. The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department.

f. Review procedures approved as standard shall enjoy no presumption that the proceedings conducted thereunder are in compliance with Chapter 23 of Title 18 of the Delaware Code.

(2) Optional Approval:

a. The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer’s assigned adjuster nor his or her supervisor, nor anyone under that supervisor’s control may participate on the panel. Moreover, if the claim involves the denial or refusal to certify either medical treatment or procedure, the presiding member or one other member of the panel shall be qualified health care professional in the appropriate health care discipline.

b. The insured is permitted to be represented by counsel;

c. The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;

d. The insured is informed as to the right to appeal, if any, an adverse decision or is informed of the binding nature of the review procedures, if so provided in the policy or plan;

e. The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision; and

f. The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department;

g. Proceedings conducted in accordance with optionally approved review procedures shall be presumed to be in compliance with Chapter 23 of Title 18 of the Delaware Code.

(d) The Commissioner may suspend, revoke or refuse to continue any exemption after notice and a hearing establishing violation of the above. The exemption provided above is not effective until the application has been filed, reviewed and approved by the Commissioner. the Commissioner may request reports from insurers from time to time on the above reviews.

§ 4. Exclusion from Arbitration.

(a) The following claims shall not be subject to arbitration under this Regulation:

(1) Claims for which there is no jurisdiction under 18 *Del. C.*, §§ 331, 332, and 21 *Del. C.*, §§ 2118 and 2118B;

(2) Claims for which there is no policy coverage in force;

(3) Claims that are already pending before any court;

(4) Claims that arise under an insurance policy from a jurisdiction other than Delaware; or

(5) Claims which arise under a homeowners’ or health insurance policy or plan which has been exempted by the Commissioner under § 3.

(b) The Arbitration Secretary or Panel are authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under subsection (a) and after notice and an opportunity to respond is provided the petitioner.

§5. General.

(a) These Arbitration Rules shall be considered applicable to accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party property and PIP claims and to first party claims in other states or territories of the United States or to foreign countries as set forth in the insurance policy.

(b) In arbitration proceedings and practice, the claimant who initiates the proceeding by filing a request for arbitration

of a controverted claim or issue with the Insurance Commissioner shall be known as the "claimant," and the company or companies against which claim or claims is asserted shall be known as "respondent(s)."

(c) Requests for arbitration with respect to health insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date of receipt of the written adverse determination or denial.

(d) Requests for arbitration with respect to homeowners' insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date an offer of settlement or denial of coverage or liability has been made by an insurer.

#### §6. Notice and Manner of Service.

(a) Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.

(b) Service of an original Petition shall be by Certified U.S. Postage and return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.

(c) The parties must provide a brief statement verifying the service of all filed papers with the manner, date and address of service.

#### §7. When Arbitration May Be Commenced.

(a) Arbitration may be commenced after the parties have attempted to resolve the matter informally and the Petitioner has provided the opposing party with all reasonably requested information in Petitioner's possession or provided the opposing party with an opportunity to obtain such information.

(b) The Panel may dismiss without prejudice the matter if it finds that the Petitioner has not attempted to resolve the matter informally or has failed to provide the opposing party with reasonably requested information.

#### §8. Commencement of Arbitration.

(a) An arbitration will commence upon the filing of a Petition and three copies, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the proper fee. The petitioner shall at the same time send a copy of the same Petition and supporting documents to the insurer or insurer's representative and a statement verifying service under § 5. The Arbitration Secretary may return any non-conforming Petition.

(b) Within 20 business days of receipt of the Petition, the responding insurer ("Respondent") shall file a Response with three copies, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached and payment of the proper fee. The Respondent shall

at the same time send a copy of the same Response and supporting documents to the Petitioner or Petitioner's representative and a statement verifying service under § 5. The Arbitration Secretary may return any non-conforming Response.

(c) If the Respondent fails to file a Response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitration Panel for summary disposition. The Panel may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on Respondent. The Arbitration Secretary or Panel may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.

(d) Upon the filing of a proper Response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitration Panel.

(e) The Insurance Department will provide the approved form of Petition or Response as they may be amended from time to time. The parties are free to produce and use their own copies of those forms.

#### §9. Arbitration Panels.

(a) The Commissioner shall establish three types of Arbitration Panels. There shall be Panels established for automobile insurance claims, homeowners' insurance claims, and health insurance claims.

(b) Each Panel shall consist of three members of suitable backgrounds or experience or as may be specified by statute, to be selected by the Commissioner. No member may serve on a Panel in which his employer or client is a party. Each Panel shall have a presiding member who shall be appointed by the Commissioner.

(1) In the case of automobile claims, each Panel shall consist of at least one Delaware attorney as a member and the balance of the members shall be Delaware licensed insurance adjusters.

(2) In the case of homeowners' claim, the Panel shall consist of individuals of suitable expertise in evaluating such claims and may include Delaware licensed property appraisers or adjusters.

(3) In the case of health insurance claims involving the certification of treatment or procedure, one member of the panel must be a licensed health care professional in the relevant area of dispute.

(c) A decision by the Panel requires concurrence by at least two of the Panel members who shall sign the written decision.

#### §10. Arbitration Hearings.

(a) The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business

days prior to the hearing. Neither party is required to appear and may rely on the filed papers.

(b) The purpose of Arbitration is an attempt to effect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter informally. Arbitration hearings shall be conducted in keeping with that goal. The arbitration hearing is not a substitute for a civil trial. In accord, the Delaware Rules of Evidence do not apply and hearings are to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Panel. If the Panel allows any brief testimony, the Panel shall allow brief cross examination or other response by the opposing party.

(c) The Arbitration Panel may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside the parties' presence for information to resolve the matter.

(d) The Panel is to consider the matter based on the submissions of the parties and information otherwise obtained by the Panel. The Panel shall not consider any matter not contained in the original or supplemental submissions of the parties which has not been provided the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.

(e) Claims for attorney fees under 21 Del. C., § 2118B, shall only be granted upon the petitioner proving that the insurer acted in "bad faith." Bad faith is an intentional, reckless or malicious indifference to the duties owed an insured, not negligence, carelessness or inadvertence of any degree.

§ 11. Subrogation Arbitration.

Subrogation arbitration between or among insurers pursuant to 21 *Del. C.*, § 2118 is not subject to this Regulation and shall continue to be conducted through Arbitration Forums, Inc., or its successor.

§ 12. Arbitration Fees.

(a) Each party to an arbitration shall tender and pay the following filing fees for arbitration.

- (1) \$30.00 for Automobile Insurance Claims
- (2) \$30.00 for Health Insurance Claims
- (3) \$30.00 for Homeowners' Insurance Claims

(b) The filing fees are non-refundable and shall only be returned when a claim is determined to be excluded from arbitration. The prevailing party at arbitration is normally entitled to recover their paid filing fees as costs. However, the Panel may for cause award the filing fee as costs as may be equitable.

§ 13. Appeals.

(a) Appeals from an adverse decision of the Arbitration Panel shall be taken to the Superior Court of the State of Delaware by filing a Notice of Appeal with the Arbitration

Secretary.

(b) The Notice of Appeal must be filed within 90 days in the case of claims for homeowners' insurance or health insurance claims and within 30 days in the case of automobile insurance claims.

(c) All further filings and proceedings shall be in accordance with the Superior Court Rules of Civil Procedure.

§ 14. Effective Date and Transition.

This amended Regulation shall be effective 30 days after promulgation.

Donna Lee H. Williams  
Insurance Commissioner  
for the State of Delaware

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**DEPARTMENT OF AGRICULTURE**
**DELAWARE THOROUGHBRED RACING  
COMMISSION**

The Delaware Thoroughbred Racing Commission proposes a new Rule 13.19 regarding the racing of claimed horses. The proposed rule would provide that no horse claimed in a claiming race could race for any amount less than the claiming price for a period of thirty days after the claim. The Commission proposes this new Rule 13.19 pursuant to 3 Del.C. sections 10103 and 10128(m)(1), and 29 Del.C. section 10115. The proposed Rule will be considered by the Commission at its next regularly scheduled meeting on July 21, 1998 at 11:00 a.m. at Delaware Park, 777 Delaware Park Boulevard, Stanton, DE. Copies of the proposed rule may be obtained from the Commission. Comments may be submitted in writing to the Commission Office on or before 4:00 p.m. on July 30, 1997. The Commission Office is located at 2320 South DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES**
**DIVISION OF PROFESSIONAL REGULATION  
DELAWARE STATE BOARD OF PHARMACY**

The Delaware Board of Pharmacy is proposing the following amendments to the Delaware Pharmacy Board Regulations:

Regulation I

- The grace period will be deleted from current regulation (Regulation I(C)(2)).
- Situations of hardship shall require notification via letter to the Board before the last day of the registration period (Regulation I(C)(3)(a)).
- Numerical changes are proposed to conform to above deletions (Regulation I(C)(2-4)).
- A deletion of independent pharmacist representation will be made to the Advisory Council on Continuing Education (Regulation I(D)).

Regulation III

- Proposed blueprints of any construction performed to pharmacies will be required within a least fifteen (15) working

days before the next scheduled Board of Pharmacy meeting (Regulation III(E)(6)).

Board Hearing

The Delaware Board of Pharmacy will hold a hearing on August 12, 1998 at 10:00 a.m. in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

The Board of Pharmacy shall receive input in writing from interested persons on proposed rules regarding the proposed additions and revision of existing Regulations I and III. The final date for interested persons to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral comments should notify the Board's Administrative Assistant, Gradella E. Bunting, at 302-739-4798 at the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware 19901.

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**DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF PROFESSIONAL  
COUNSELORS OF MENTAL HEALTH**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 3007(a)(1), the Delaware Board of Professional Counselors of Mental Health proposes an amendment to Rule VI of the Rules and Regulations. The proposed rules and regulations would allow the Board to impose continuing education requirements for licensees.

The public hearing has been scheduled for July 31, 1998 on the proposed Rules and Regulations at 1:00 p.m. in the Second Floor Conference Room A of the Cannon Building, will receive and consider input, in writing, from interested persons on the proposed rules and regulations. The final date for interested persons to submit comments shall be at the above-scheduled public hearing. Anyone wishing to obtain a copy of the proposed regulations, or to make comments at the public hearing should notify the Board's Administrative Assistant Gayle Franzolino by calling (302) 739-4522 Ext. 220, or by writing to the Delaware Board of Professional Counselors of Mental Health, P. O. Box 1401, Cannon Building, Dover, Delaware 19903.

**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, July 16, 1998 at 10:00 a.m.

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**DEPARTMENT OF FINANCE****Division of Revenue**

**PROPOSED TAX RULING 98-** June 15, 1998

**CONTRACTORS LICENSE TAX**

This regulation is proposed pursuant to authority granted the Director of Revenue in section 563 and is published as required by 2103(c) of Title 30 of the Delaware Code. Public Comment on this proposed regulation shall run from July 1, 1998 through July 30, 1998. Comments should be in writing and addressed to John Maciejewski, Assistant Director, Office of Business Taxes, Division of Revenue, State Office Building, 820 North French Street, Wilmington, Delaware 19801, and must be received by July 30, 1998.

The purpose of this regulation is to explain the requirements for deductibility of payments made by a contractor to a subcontractor under section 2501(5) of title 30.

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**PROPOSED TECHNICAL INFORMATION  
MEMORANDUM 98-2**

JUNE 8, 1998

Public Comment shall run from July 1, 1998 through July 30, 1998 and comments must be received by July 30, 1998. Comments shall be made in writing to John Maciejewski, whose address appears at the conclusion of this Memorandum.

Purpose of Regulation — The purpose of this regulation is to explain the effect of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat 1755 (the Act), as it relates to Subchapter S corporations, the relationship between the classification of organizations for federal and state tax purposes and the procedures for electing entity classification.

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**DEPARTMENT OF HEALTH &  
SOCIAL SERVICES****DIVISION OF PUBLIC HEALTH****OFFICE OF HEALTH FACILITIES LICENSING  
AND CERTIFICATION**

The Office of Health Facilities Licensing and Certification, Division of Public Health of the Department of Health and Social Services, will hold public hearings to discuss proposed major revisions to the Delaware Rules and Regulations Governing the Application and Operation of Managed Care Organizations. The proposed regulations describe the Certificate of Authority application requirements, general requirements, quality assurance and operations, enrollee rights, and administrative requirements for Managed Care Organizations operating or desiring to operate in the State.

Public Hearings will be held on the following dates and locations:

1. July 28, 1998 at 9:00 AM in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware
2. July 30, 1998 at 10:00 AM in Rooms 1 and 2, Springer Building, DHSS Herman Holloway Campus, 1901 N. duPont Highway, New Castle, Delaware.

Copies of both the proposed revised and current regulations are available for review by calling the following locations:

Office of Health Facilities Licensing and Certification

Three Mill Road, Suite 308  
Wilmington, Delaware 19806  
Telephone: 302-577-6666

Office of Health Facilities Licensing and Certification

Jesse S. Cooper Building  
Federal and Water Streets  
Dover, Delaware 19901  
Phone: 302-739-6610

Anyone wishing to present their oral comments at this hearing should contact Vanette Seals at (302) 577-6666 by July 24, 1998. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by August 3, 1998 to:

Jeffrey Beaman, Hearing Officer  
Division of Public Health  
Federal and Water Streets  
Dover, Delaware 19901

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# CALENDAR OF EVENTS/HEARING NOTICES

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## DIVISION OF SOCIAL SERVICES

### TANF PROGRAM

The Delaware Health and Social Services / Division of Social Services / *A Better Chance* Program is proposing to implement a policy change to the Division of Social Services' Manual Sections 3000 and 11000. The change arises from the federal Balanced Budget Act of 1997, which exempted from employment and training sanctions a Temporary Assistance for Needy Families (TANF) client with a child under 6 years of age if an inability to obtain child care can be demonstrated.

#### SUMMARY OF PROPOSED REVISIONS:

- Exempts from employment and training sanctions a Temporary Assistance for Needy Families (TANF) client with a child under 6 years of age if an inability to obtain child care can be demonstrated.
- Establishes definitions governing the inability to obtain child care and procedures by which the applicable determinations can be made.

#### COMMENT PERIOD

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by July 31, 1998.

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## DIVISION OF SOCIAL SERVICES

### A BETTER CHANCE PROGRAM

The Delaware Health and Social Services / Division of Social Services / *A Better Chance* Program is proposing to implement a policy change to the Division of Social Services' Manual Section 3008. The change arises from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January, 1995, as part of the original *A Better Chance* (ABC) waiver design.

#### SUMMARY OF PROPOSED REVISIONS:

Deny cash assistance to children born to a teenage parent after December 31, 1998, unless the parent is married or at least eighteen (18) year of age.

The Division will conduct a series of public hearings at which this proposal will be discussed. The schedule for these hearings is as follows:

- |  |                  |
|--|------------------|
| August 4, 1998 - Del Tech Terry Campus (Dover)                 |                  |
| Lecture Hall   | 7 p.m. to 9 p.m. |
| August 6, 1998 - Del Tech Stanton Campus                       |                  |
| Conference Facility  | 7 p.m. to 9 p.m. |
| August 12, 1998 - Carvel State Office Building<br>(Wilmington) | 4 p.m. to 6 p.m. |
| August 13, 1998 - Del Tech Owens Campus<br>(Georgetown)        | 4 p.m. to 6 p.m. |

Any person unable to attend these hearings who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P. O. Box 906, New Castle, DE, by August 15, 1998.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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## DIVISION OF SOCIAL SERVICES

### Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its DME, pharmacy, general policy, non-emergency medical transportation, and long term care provider manual(s).

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning this change must be received by mail no later than August 1, 1998, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated. Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-

4880, extension 131, for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

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## **DEPARTMENT OF INSURANCE**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Monday, July 27<sup>th</sup>, 1998 at 10:00 a.m. in the 2<sup>nd</sup> Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

**The purpose of the Hearing is to solicit comments from the insurance industry and the general public on proposed revisions to the standards for the Defensive Driving Course (Automobiles and Motorcycles).**

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Monday, July 20, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302-739-4251, ext. 157 or 800-282-8611 no later than Monday, July 20, 1998.

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## **DEPARTMENT OF INSURANCE**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Monday, July 29<sup>th</sup>, 1998 at 10:00 a.m. in the 2<sup>nd</sup> Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

**The purpose of the Hearing is to solicit comments from the insurance industry, the agent community and the general public on proposed revisions of the Delaware Workplace Safety Program to increase the number of businesses eligible to participate.**

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter

101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Monday, July 22, 1998 and should be addressed to Fred A. Townsend, III, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302-739-4251, ext. 157 or 800-282-8611 no later than Monday, July 22, 1998.

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## **DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL**

### **DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION**

TITLE OF THE REGULATIONS:

**REGULATION 1, SECTION 2 - DEFINITIONS  
REGULATION 24, SECTION 2 - DEFINITIONS**

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to revise the definition of volatile organic compounds (VOCs) in Regulation 1, Section 2 and the definition of exempt compounds in Regulation 24, Section 2. These proposed revisions will add twenty-four (24) VOCs that have been determined by the Environmental Protection Agency (EPA) to have negligible photochemical reactivity to Delaware's definition. This action will make the State of Delaware's definition of exempt VOCs consistent with the federal definition of exempt VOCs published at 40 CFR Part 51.100(s)(1).

A public hearing on the proposed revisions to Regulation 1, Section 2 and Regulation 24, Section 2 will be held on Thursday, July 30, 1998, beginning at 7:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. For information concerning the hearing, the public should call Ms. Joanna French at (302) 323-4542

**DIVISION OF AIR & WASTE MANAGEMENT**  
**AIR QUALITY MANAGEMENT SECTION**
**PUBLIC SERVICE COMMISSION**

TITLE OF THE REGULATIONS:

**REGULATION 20, SECTION 29 - NEW SOURCE PERFORMANCE STANDARDS FOR HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS**

**IN THE MATTER OF THE REGULATION ESTABLISHING THE MINIMUM FILING REQUIREMENTS FOR ALL REGULATED COMPANIES SUBJECT TO THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION, PSC REGULATION DOCKET NO. 4, ORDER NO. 4805**

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BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to adopt the New Source Performance Standards for Hospital/Medical/Infectious Waste Incinerators found at 40 CFR Part 60, Subpart Ec by reference. In addition, to satisfy the requirements of 40 CFR Part 60, Subpart Ce, the Department has prepared a State Plan for existing sources and is proposing to expand the applicability of Subpart Ec so that it will apply to both new and existing hospital, medical, and/or infectious waste incinerators. The proposed State Plan includes the proposed adoption by reference regulatory language of 40 CFR Part 60, Subpart Ec.

Subpart Ec establishes emission limits for nine different pollutants including tetra- through octa-chlorinated dibenzo-para-dioxins and dibenzofurans, particulate matter, carbon monoxide, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. This subpart will also establish requirements for operator training and qualification, submittal of a waste management plan, siting requirements for new facilities, compliance and performance testing, monitoring, record keeping, and reporting.

3. POSSIBLE TERMS OF THE AGENCY ACTION: None
4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT: 7 Delaware Code, Chapter 60
5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL: None
6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed State Plan and proposed Regulation 20, Section 29 will be held on Thursday, July 30, 1998, beginning at 6:30 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. For information concerning the hearing the public should call Ms. Joanna French at (302) 323-4542

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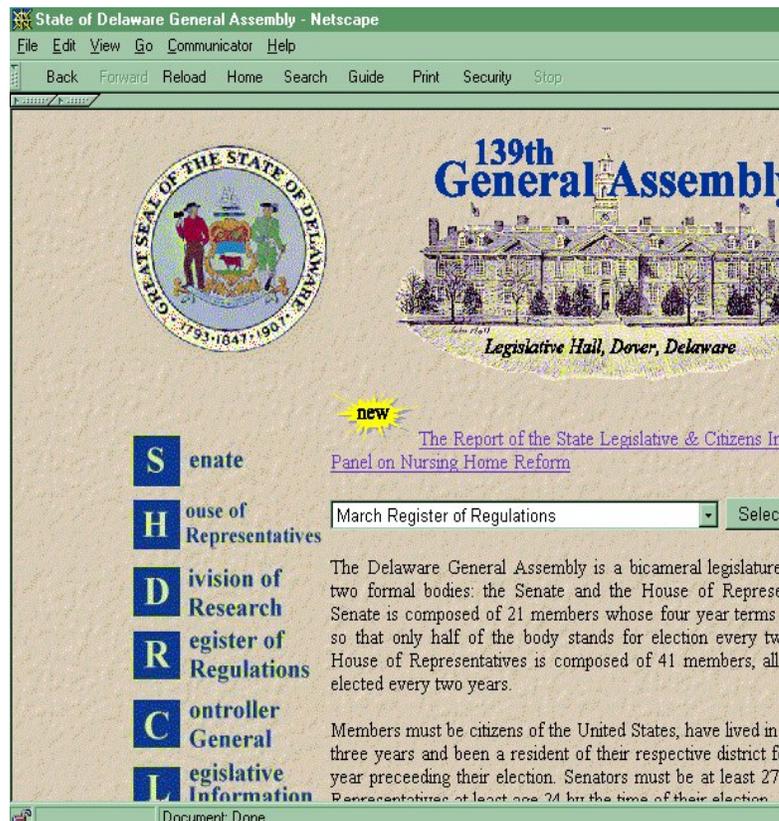
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